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Human Rights Council
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Agenda items 3 and 5
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Human rights bodies and mechanisms

Progress report of the research-based report of the Human Rights Council Advisory Committee on best practices and main challenges in the promotion and protection of human rights in post-disaster and post-conflict situations

Note by the secretariat

1. In its resolution 22/16, the Human Rights Council requested the Advisory Committee to prepare a research-based report on best practices and main challenges in the promotion and protection of human rights in post-disaster and post-conflict situations, with a focus on human rights mainstreaming in relief, recovery and reconstruction efforts, while respecting the humanitarian principles of humanity, impartiality, neutrality and independence and the needs-based approach of humanitarian assistance, in particular to foster the capacity of States in such efforts. The Council requested the Committee to present a progress report of the research-based report to the Council at its twenty-sixth session and the final report at its twenty-eighth session.

2. At its twelfth session, in February 2014, the Advisory Committee decided to recommend that the Human Rights Council extend the time schedule envisaged in order to allow the Committee to achieve better informed work by recirculating questionnaires to seek the views and inputs of the various stakeholders, and that the Committee be requested to submit the progress report to the Council at its twenty-seventh session and the final report at its twenty-eighth session.

3. The above-mentioned progress report of the Advisory Committee will therefore be finalized for the twenty-seventh session of the Human Rights Council.

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Research-based report of the Human Rights Council Advisory Committee on the ways and means to enhance international cooperation in the field of human rights

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I. Introduction

1. In its resolution 13/23 on enhancement of international cooperation in the field of human rights, the Human Rights Council requested the Human Rights Advisory Committee to explore ways and means to enhance international cooperation in the field of human rights, taking into account the views of States and other relevant stakeholders, and to submit proposals in that regard to the Council at its nineteenth session. In order to give effect to that mandate, the Advisory Committee, pursuant to its recommendation 5/4, established a drafting group chaired by Dheerujlall Seetulsingh. Emmanuel Decaux was appointed the first Rapporteur of the drafting group. Upon his resignation from the Committee, he was replaced by Laurence Boisson de Chazournes. Following its consideration at its sixth session of a working paper on the subject of the mandate submitted to it by the drafting group, the Committee considered a progress report on the same subject at its seventh session and submitted that report to the Council at the Council's sixteenth session. At that session, the Committee also prepared and distributed a questionnaire to seek further views from States and relevant stakeholders. Following its analysis of the relevant texts and the responses received to its questionnaires, the Committee submitted its final report to the Human Rights Council at its nineteenth session (A/HRC/19/74).

2. A multi-stakeholder seminar on the enhancement of international cooperation in the field of human rights was organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR) on 15 February 2013. The seminar discussed, among other things, the final report of the Advisory Committee. Pursuant to Council resolution 19/33, a report on the seminar was submitted to the Council at its twenty-third session (A/HRC/23/20).

3. At its twenty-third session, in resolution 23/3, the Council requested the Advisory Committee to prepare, in consultation with States, a more focused and in-depth study on the ways and means to enhance international cooperation in the field of human rights, including, but not limited to, the identification of areas where further progress could be made, taking into account responses received as a result of further consultations with States, and to submit a progress report to the Council at its twenty-sixth session.

4. In order to give effect to resolution 23/3, the Advisory Committee, pursuant to its recommendation 11/2, set up a drafting group at its eleventh session consisting of Saeed Mohamed Al Faihani, Laurence Boisson de Chazournes, Mario Luis Coriolano, Latif Hüseynov, Alfred Ntunduguru Karokora, Obiora Chinedu Okafor (Rapporteur), Katharina Pabel and Dheerujlall Seetulsingh (Chair), as well as Shigeki Sakamoto, whose term ended on 30 September 2013. Subsequently, Mikhail Lebedev and Jean Ziegler also joined the drafting group. The Committee tasked the drafting group with the preparation of a draft progress report to guide the in-depth discussion to be held at its twelfth session, in February 2014. The drafting group also held preliminary discussions on the mandate during that session and, after receiving approval from the Advisory Committee as a whole, prepared a questionnaire that was then circulated to States. The Rapporteur of the drafting group subsequently prepared a draft report, which was considered and endorsed by the drafting group in the period between the eleventh and twelfth sessions of the Committee.[1] That draft formed the basis for the present progress report.

[1] The members of the drafting group are grateful to Aaron Stone and Basil Ugochukwu of the Osgoode Hall Law School, York University, Toronto, Canada, for their important input during the drafting of the present report.

II. Some key challenges to international cooperation in the field of human rights

5. The challenges to international cooperation in the field of human rights are well known and therefore will not be discussed here in any depth. Yet, given the ways in which, too often, they can seriously set back progress towards the realization of human rights the world over, they deserve some measure of discussion in any study on the subject. As the Advisory Committee has noted (see A/HRC/19/74, paras. 23-25), the overall tone of the texts conferring a mandate on the Human Rights Council is one of constructive international dialogue and cooperation. However, such dialogue and cooperation towards the realization of human rights everywhere is unlikely to be constructive without mutual tolerance and respect (see Council resolution 13/23).[2] This kind of cultural sensitivity should not of course imply cultural absolutism.[3] As importantly, significant levels of selectivity can weaken moral authority and capacity to rapidly and robustly foster a culture of human rights in many parts of the world. It bears mentioning here that the decision to create and implement the universal periodic review process of the Human Rights Council was driven in part by this kind of realization (see General Assembly resolution 60/251, para. 4). As the Committee has also noted, international cooperation in the field of human rights is also harmed when it is reduced in any appreciable degree to a mere juxtaposition of national interests or the logic of power relations (A/HRC/19/74, para. 35) A constructive dialogue that drives and reflects meaningful international cooperation is far less likely to take place if it is not based on the idea that human rights knowledge ought to circulate in a multidirectional way among the world's peoples. As importantly, there is a growing realization within and beyond the Human Rights Council of the seriousness of the negative impact of the inadequate resources available to assist certain countries with their participation in the universal periodic review process and in their the implementation of the recommendations that result therefrom (see Council resolutions 19/33 and 23/3).

III. Deepening civil society involvement

6. The important roles played by civil society groups, especially non-governmental organizations, in the human rights field are widely appreciated and a detailed discussion of that subject need not detain us here. The critical task that is now before the United Nations in general and the Human Rights Council in particular is to find ways and means of optimally harnessing the potential of those groups to contribute to the human rights work of the United Nations. As the Advisory Committee has suggested (see A/HRC/19/74, para. 49), it is now time to go beyond the usual rhetoric and move towards practical institutional changes that will give effect to the apparent consensus in the Council on the need to deepen the involvement of civil society actors in international cooperation in the human rights area.

7. For one, as the Advisory Committee suggested in its first report on the present subject, the Committee on Non-Governmental Organizations, a standing committee of the Economic and Social Council which is currently made up entirely of States, may need to be restructured to include in some, perhaps advisory, form the accredited and legitimate representatives of civil society organizations. In this connection, the tripartite model

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[2] D.A. Bell, "The East Asian challenge to human rights: reflections on an East West dialogue", in *Human Rights Quarterly* vol. 18, No. 3 (August 1996), pp. 641-667; and J. Donnelly, "The relative universality of human rights" in *Human Rights Quarterly*, vol. 29, No. 2 (May 2007), pp. 281-306.

[3] C. Nyamu, "How should human rights and development respond to cultural legitimization of gender hierarchy in developing countries?" in *Harvard International Law Journal*, vol. 41, No. 2 (Spring 2000), p. 381.

adopted by the International Labour Organization (ILO) may be instructive. At ILO, all the key stakeholders in the labour relations field (States, employers' groups and labour unions) are significantly accommodated and afforded a meaningful standing and voice within the main organs of the organization.

8. Second, local civil society organizations, especially those in the developing world, tend to be underrepresented among the groups that actually participate directly, actively and meaningfully in the human rights work of the United Nations. This raises important issues regarding the global inclusiveness, accountability and legitimacy of the cohort of such organizations which tends to dominate the space reserved for "other stakeholders" within the United Nations human rights system.[4] Clearly, there is thus a need to find ways and means of at least reducing this apparent inclusion-deficit in the representation of civil society organizations within that system. One suggestion is to reform the way in which access to United Nations debates is afforded to them. For example, rather than requiring all such organizations that wish to participate in the human rights work of the United Nations to first obtain consultative status, a second path to access could be created which would allow local civil society organizations in developing countries that have been granted similar recognition and status by their regional and/or national human rights bodies to gain, in consequence, automatic access to United Nations human rights institutions.

IV. Enhancing the involvement of national human rights institutions

9. The focus here is on how the contributions of national human rights institutions to the human rights work of the United Nations can be optimally enhanced. It should be noted at the outset that formal and informal global or regional-level cooperation among such institutions is now the norm rather than the exception. Within the framework and the structure of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, which is registered and based in Geneva, and at the continental and other levels, national human rights institutions the world over have met regularly to share experiences and best practices, and to advocate new themes enhancing the cause of human rights.[5] There is significant evidence, for instance from the International Coordinating Committee's engagement with the Nigerian national human rights institution, that this way of interaction and cooperation among institutions, and especially their mechanisms for classifying and sanctioning those institutions which do not meet their laid down standards, can produce important dividends for the effort to realize human rights. However, if the full potential of the national human rights institutions to contribute to the realization of human rights is to be harnessed by the United Nations system, the involvement of those bodies and their various global and regional associations in United Nations human rights work must be deepened. This can be done, for example, by finding ways to resource them more adequately, including through lending more support staff, and information exchanges between similarly situated institutions. Responses received to the questionnaires distributed by the Advisory Committee suggest a widespread awareness among States of the need to strengthen these bodies. They also tend to

[4] K. Anderson, "The Ottawa convention banning landmines, the role of international non-governmental organizations and the idea of international civil society" in *European Journal of International Law*, vol. 11, No. 1 (2000), p. 92; and D.B. Reiser and C.R. Kelly, "Linking NGO accountability and the legitimacy of global governance" in *Brooklyn Journal of International Law*, vol. 36, No. 3 (2011), p. 1020.

[5] D. Seetulsingh, presentation at the Seminar on the Enhancement of International Cooperation in the Field of Human Rights, Geneva, 15 February 2012.

acknowledge that some State-to-State cooperation aimed at achieving these ends already takes place.

V. Enhancing efforts to realize the right to development

10. There is little disagreement, if any, within and beyond the Human Rights Council that international cooperation is required to address the basic structural obstacles, such as poverty and underdevelopment, to the realization of many economic, social and cultural rights, as well as certain civil and political rights.[6] In this regard, the comparative advantage enjoyed by United Nations human rights bodies, especially the Human Rights Council, lies in the area of finding ways and means to give effect to the right to development both within and between States.

11. Many States agree that the post-2015 development agenda should adhere to human rights principles, including the principle that all peoples are entitled to the enjoyment of the right to economic, social and political development, as set out in, for example, the Declaration on the Right to Development and article 22 of the African Charter on Human and Peoples' Rights.[7] The basic emergent idea here is that the effort to realize the right to development ought no longer to be based primarily on a concept of "charitable giving" but should be founded on the normative entitlement of every human being and society to be free from extreme poverty and deprivation, one that ought to be stoutly supported and enhanced by a system of accountability. Instructively in this regard, in its recent report, the High-Level Panel on the Post-2015 Development Agenda[8] called on the United Nations, its Member States, regional organizations, civil society and all concerned to make the following "five big transformative shifts":

(a) Move from reducing to ending poverty (with no one left behind);

(b) Put sustainability at the core of development;

(c) Transform economies for jobs and inclusive growth;

(d) Build peace, as well as effective, open and accountable institutions for all;

(e) Forge a new global partnership, based at least in part on mutual accountability.

12. The prominence and emphasis given to accountability in the conception and articulation of these "five big transformative shifts" reflect the gradual congealing in our time of a new consensus on the ways to advance the development agenda. It is a reflection of this gradually emerging consensus that the Secretary-General, in his report on the post-2015 development agenda,[9] also called for the entrenchment of accountability in the conception and execution of that agenda. Indeed, at the very least, in paragraph 75 of that

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[6] Z. Kedzia, statement before the Advisory Committee on international cooperation in the field of human rights, Geneva, 13 August 2013; and Human Rights Council resolution 23/3.

[7] Office of the United Nations High Commissioner for Human Rights, *Realizing the Right to Development* (Geneva, OHCHR, 2013).

[8] See *A New Global Partnership: Eradicate Poverty and Transform Economies through Sustainable Development*, available at www.post2015hlp.org/the-report.

[9] "A life of dignity for all: accelerating progress towards the Millennium Development Goals and advancing the United Nations development agenda beyond 2015" (A/68/202 and Corr.1). See also S.P.Marks, ed., *Implementing the Right to Development: The Role of International Law* (Geneva: FES, 2008), p. 131; and O.C. Okafor, "The status and effect of the right to development in contemporary international law: towards a South-North entente" in *African Journal of International and Comparative Law*, vol. 7 (1995), p. 865.

report, which is itself based in part on the High-Level Panel's report, it is stated firmly that, if the kind of sustainable development agenda that the Secretary-General desires is to take root, there is a need to establish a participatory monitoring framework for tracking progress, and mutual accountability mechanisms for all stakeholders. In paragraph 81 of the same report, reference is made to the need to ensure that the international community is equipped with the right institutions and tools for addressing the challenges of implementing the sustainable development agenda at the national level. Thus, the idea that everyone involved in the development process the world over must be fully accountable appears to have a central, and even critical, place in current United Nations thinking about the ways and means of advancing the development agenda post-2015.

13. Against this background, one way of enhancing international cooperation in this important aspect of the human rights area is to collect and list core violations of the right to development (many of which already exist as hard law) in a revised and enhanced Declaration on the Right to Development with an in-built and robust tracking, reporting and monitoring mechanism, or perhaps even in a new treaty on the right to development (which the Council has been exploring for some time now). In this respect, article 22 of the African Charter on Human and Peoples' Rights and the increasing number of well-reasoned decisions in which it has been interpreted and applied to real-life situations in the African context are a kind of forerunner. For example, the now celebrated *Endorois* case decided by the African Commission on Human and Peoples' Rights and the fact of the compliance of Kenya with it to a significant extent serve as a pointer to what the future could hold in this regard at the global level.[10] Other important decisions issued by the African Commission in the present regard include *D. R. Congo v. Burundi, Rwanda and Uganda*,[11] where it found a violation of the right to development; *Association Pour la Sauvegarde de la Paix au Burundi v. Tanzania et al*;[12] and the *Southern Cameroons* case.[13]

VI. Deepening South-South cooperation in the human rights area

14. South-South cooperation is already well recognized within the United Nations system as a way of strengthening its work across the board. According to the United Nations Office for South-South Cooperation, this form of cooperation is a broad framework for collaboration among countries of the South in the political, economic, social, cultural, environmental and technical domains. Involving two or more developing countries, it can take place on a bilateral, regional, subregional or interregional basis. Developing countries share knowledge, skills, expertise and resources to meet their development goals through concerted efforts … Collaboration in which traditional donor countries and multilateral organizations facilitate South-South initiatives through the provision of funding, training

[10] *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of the Endorois Welfare Council v. Kenya*, 27th Annual Activity Report of the African Commission on Human and Peoples' Rights, 2009–2010, Annex V. See also Minority Voices Newsroom, www.minorityvoices.org/news.php/fr/1462/Kenya-mrgs-head-of-law-visits-endorois-community-in-the-rift-valley.

[11] Communication 227/99, 33rd Ordinary Session of the African Commission on Human and Peoples' Rights, May 2003.

[12] Communication 157/96, 33rd Ordinary Session of the African Commission on Human and Peoples' Rights, May 2003.

[13] Communication 266/2003, 26th Activity Report 2009, Annex IV.

and management and technological systems as well as other forms of support is referred to as triangular cooperation.[14]

15. According to the same office, the key feature of South-South cooperation is that it is initiated, organized and managed by developing countries themselves. Yet non-State actors do actively participate. An important goal of this approach to international cooperation is to increase the quantity and enhance the quality of international development cooperation. A key benefit of this form of cooperation is the use of experience and capacity that already exist and the development of new capacities in developing countries. A second benefit is that, as is well recognized now, it tends to rankle less and be received better in the receiving country when the donor is a similarly situated country. Another benefit of such cooperation is that it is often significantly less expensive to execute than other forms of international cooperation.

16. Clearly, the human rights field does fit, and indeed is actively included, within this rubric. This much is recognized in the concluding section of the report of the seminar on the enhancement of international cooperation in the field of human rights convened by OHCHR in Geneva in February 2013 (A/HRC/23/20). The more important questions for present purposes are how to expand and deepen the utilization of this important form of international cooperation in the human rights field and what role the Human Rights Council can play in attaining those objectives. How, for example, can the experience and capacity that already exist within certain countries of the South be deployed in other developing countries which are not as endowed in the relevant respect, thereby developing new human rights resource capacities in the latter countries in a less expensive and more effective way? And what role, if any, exists for triangular cooperation in this regard?

17. To take the African continent as an example, some of the countries there are much richer in terms of human resources than others. It will often be significantly cheaper, more socioculturally and politically sensitive and therefore more effective in the long run to find ways of deploying human rights experts from countries that are more endowed in this regard to assist countries in the region which are not as well endowed. But because none of these countries is financially rich, triangular cooperation has an important role to play in boosting available funding and providing important technology to such projects. Triangular cooperation involving OHCHR could also be utilized as a quality assurance mechanism.

18. In this connection, long-existing programmes such as the Technical Aid Corps scheme of Nigeria, which is almost entirely funded by that country on its own, serve as important models and guides for the kinds of programmes and projects which the Human Rights Council, through OHCHR, could take steps to collaborate with, provide greater funding and support to and, in the end, harness.[15] Already the scheme collaborates actively with the Commonwealth Secretariat and has signed a memorandum of understanding with that body. Established in 1987, it assists States in Africa, the Caribbean, the Commonwealth and other specific regions in their socioeconomic development efforts, through the posting of qualified persons to serve for two-year terms in the relevant countries, in accordance with their expressed needs. A key expressed goal of this programme is to share Nigerian know-how and expertise with the recipient countries. Thus far, over 35 countries have benefited from this scheme.

19. As some countries suggested in response to the questionnaires distributed by the Advisory Committee, these kinds of South-South exchanges should be expanded and

[14] United Nations Office for South-South Cooperation, "What is South-South cooperation?", available from http://ssc.undp.org/content/ssc/about/what_is_ssc.html.

[15] Directorate of Technical Aid Corps, available from www.tacng.org/brief_history.php.

deepened with the support of the international community, especially the Human Rights Council.

VII. Deepening human rights education

20. Given that, even with all their limitations, human rights now appear to be all that we have to interrogate the barbarisms of power[16] and that human rights education and training is a key way of realizing human rights, there is an imperative need to take such education and training extremely seriously as an aspect of international cooperation in the field of human rights. With the help of the Advisory Committee, the Human Rights Council has made significant efforts to meet this need. In March 2011, the Council adopted the United Nations Declaration on Human Rights Education and Training, based on a draft produced by the Advisory Committee. This text was later adopted by the General Assembly in its resolution 66/137. Among other things, the Declaration makes the important point that human rights education should become an integral part of the educational curriculum, a point that many States have also emphasized. As importantly, article 12 of the Declaration lays stress upon the need for international cooperation at all levels to support and reinforce efforts at the local level to implement human rights education and training.[17] The emphasis on human rights education as being one of the most effective means of promoting human rights cannot be gainsaid.[18] It is one of the most practical methods of achieving international cooperation in the human rights field.[19]

21. Yet a partial paradigm shift may be required if international cooperation in the conception and execution of the project of human rights education is to achieve its full potential. It bears emphasizing here that human rights education ought to be founded much more than has hitherto been the case on a constructive dialogue among peoples and civilizations, and far less on an alienating and unhelpful sort of monologue in which one section of the world instructs the rest on human rights. While countries do differ in the degree to which they respect human rights norms, nowhere in the world is absolute respect for human rights as yet a mass cultural fact.[20] So every society has something to learn from others. Thus, human rights education cannot be a one-way traffic and cannot flow in a unidirectional manner from one section of our global neighbourhood to the others.[21] Genuine international cooperation in the area of human rights education ought to involve two-way or multidirectional exchanges of information, ideas and knowledge. This much is recognized in the concluding section of the report of the seminar on the enhancement of international cooperation in the field of human rights, convened by OHCHR in Geneva in February 2013 (A/HRC/23/20, para. 52).

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[16] U. Baxi, *The Future of Human Rights* (Delhi, Oxford University Press, 2006), p. 4.

[17] D. Seetulsingh, presentation at the Seminar on the Enhancement of International Cooperation in the Field of Human Rights, Geneva, 15 February 2012.

[18] Ibid.

[19] Ibid.

[20] P. Houtondji, "The master's voice – remarks on the problem of human rights in Africa" in UNESCO, *Philosophical Foundations of Human Rights* (Paris, UNESCO, 1986), pp. 320–332.

[21] O.C. Okafor and S.C. Agbakwa, "Re-imagining international human rights education in our time: beyond three constitutive orthodoxies" in *Leiden Journal of International Law*, vol. 14 (2001), pp. 563-590.

VIII. Strengthening the global infrastructure for human rights cooperation

A. Universal adherence to human rights texts and bodies

22. As the Advisory Committee noted in its first report on international cooperation in the field of human rights (A/HRC/19/74), a major priority of such international cooperation should be securing the universal application of international human rights instruments, in line with the objective established at the Vienna World Conference on Human Rights. Since the introduction and establishment of the universal periodic review process in 2006, the rate of human rights treaty ratification has been increasing exponentially.[22] But ratification of all such treaties by every State has not yet been attained. In consciousness-raising activities, including the universal periodic review process itself, increased emphasis needs to be placed on the necessity for universal ratification and application. As the Committee also noted in its first report, the Human Rights Council should launch a "reservations dialogue" to persuade States to withdraw reservations that serve no purpose and to refrain from entering reservations that are contrary to the purposes and objectives of the treaty concerned (ibid. para.41). States should also be encouraged, where necessary, to enter declarations submitting themselves to scrutiny by bodies set up under such treaties. Additionally, international cooperation should focus on bringing together all States and actors to work for the promotion and protection of human rights. Every effort should be made to ensure the universal participation of States in such cooperation.

B. Consolidating and synchronizing State reporting

23. Given that many States, including those surveyed by the Advisory Committee for the present report, have complained of excessive reporting obligations, it is increasingly being recognized that there is a need to find ways and means of consolidating and synchronizing State reporting to the various United Nations human rights bodies, so as to reduce the associated workload for States, relieve some of the great pressure that has been put on the rather scarce resources of very many developing and smaller countries, promote efficiency and enhance holistic reporting by target States.[23] This is essential to support their ability to engage in international cooperation in the human rights field. One current proposal is to find a way to harmonize the periodicity of State reporting by ensuring that every State submits only one comprehensive report every set number of years to all the treaty bodies.[24] For the avoidance of doubt, however, the universal periodic review reporting process would remain outside the treaty body reporting system.

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[22] Suzanne Egan, "Strengthening the United Nations human rights treaty body system" in *Human Rights Law Review*, vol. 13, No. 209 (2013), p. 211.

[23] See Felice D. Gaer, "A voice not an echo: universal periodic review and the UN treaty body system" in (2007) *Human Rights Law Review*, vol.7, No. 109 (2007), pp. 117–118; and statement of the United Nations High Commissioner for Human Rights at the twelfth session of the Human Rights Council, 14 September 2009, available from www2.ohchr.org/english/bodies/HRTD.

[24] Allehone Mulugeta Abebe, "Of shaming and bargaining: African States and the universal periodic review of the United Nations Human Rights Council" in 9 *Human Rights Law Review*, vol. 9, No.1, (2009), p. 8; and Felice D. Gaer, op.cit., p. 215.

C. Strengthening the subsidiary bodies and special procedures of the Human Rights Council

24. As confirmed by the responses of many States to the survey administered by the Advisory Committee, there is widespread realization that the financial and human resources available to assist the subsidiary bodies and special procedures of the Human Rights Council in undertaking their work is at best limited.[25] Against this background, the Council, in its resolution 16/21, requested the Secretary-General to ensure the availability of adequate resources within the regular OHCHR budget to support the full implementation by special procedures of their mandates (para. 32). Further, the Council recognized the need for extra funding to support the work of the special procedures and welcomed further voluntary contributions by Member States, emphasizing that those contributions, to the extent possible, should be unearmarked (para. 33). The Council should step up its commendable efforts to ensure that its subsidiary bodies and special procedures are resourced adequately. Note should also be taken of the fact that there is a particularly urgent need to better resource the Advisory Committee, which is not even resourced at the inadequate special procedure level and whose members currently have to rely to a significant degree on resources from outside the United Nations system to undertake their work in an effective manner.

25. Another kind of challenge that is faced particularly by the special procedures is the reluctance of all too many States to cooperate with them, especially in the area of issuing standing invitations to them to visit their countries.[26] This is so despite the Council's regular reaffirmation of the need for States to cooperate with the special procedures (see Council resolution 16/21, para. 23). Thus far, fewer than 40 per cent of Member States have issued such standing invitations. Yet standing invitations represent an opportunity for States to make a cooperative gesture by inviting special procedure mandate holders to perform their work. While maintaining the voluntary character of the issuance of standing invitations, the Council should consider establishing an opt-out system in which States that do not wish to issue them must take active steps to opt out, and are taken to have consented to issue standing invitations if they do not opt out of doing so before an agreed date.

26. There is also a need for greater coordination between the Council's subsidiary bodies and its special procedures, as well as within each of those categories. There is of course a Special Procedures Coordination Committee, established in 2005, whose main function is to facilitate coordination among the special procedures, and between them and OHCHR, civil society and the broader United Nations human rights system.[27] However, more could be done in this regard. For example, special procedure mandate holder visits to a particular country could be coordinated and conducted jointly to reduce the amount of resources and time host States spend cooperating with them, thereby increasing the willingness and ability of States to extend such cooperation and ultimately enhancing this aspect of international cooperation in the field of human rights. Special procedures and the Advisory Committee should also interact regularly, at least annually, to exchange ideas and share knowledge.

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[25] Paulo Sergio Pinheiro, "Being a special rapporteur: a delicate balancing act" in *The International Journal of Human Rights*, vol.15 (2011), pp. 162-171.

[26] Ted Piccone, "Catalysts for rights" Brookings Institute (2010), p. 9, available from www.brookings.edu/~/media/research/files/reports/2010/10/human%20rights%20piccone/10_human_rights_piccone.pdf; and Surya P. Subedi, "Protection of human rights through the mechanism of UN special rapporteurs" in *Human Rights Quarterly*, vol. 33, No. 201 (2011), p. 211.

[27] Ted Piccone, op.cit., p. 35.

D. Improving coordination with and among regional bodies

27. As the Advisory Committee observed in its first report on international cooperation in the field of human rights, an aspect of international cooperation that is still all too often neglected is the role of regional systems (A/HRC/19/74, para. 43). Two main dimensions of this aspect of international cooperation may be emphasized: (a) cooperation among regional bodies, including greater interaction among those of a similar socioeconomic and political background, and (b) coordination between regional bodies on the one hand and the United Nations human rights system on the other. In both cases, the main goals are to share best practices among the relevant bodies in as deep and widespread a manner as possible, and to create operational efficiencies.

28. To that effect, both dimensions seem to require similar kinds of measures to broaden and strengthen them. Chief among such measures are the expansion and deepening of exchanges of staff, information, knowledge and technology among the relevant bodies, and the institutionalization of programmes of joint country visits and other joint activities among those bodies. However, such improvements in international cooperation cannot yield an optimal harvest unless certain operational steps are taken or enhanced. In this regard, it is suggested that each regional body and the Human Rights Council/OHCHR should establish a high-level focal point (which can either be a person or an office) to provide leadership, impetus and visibility in this crucial area of achieving greater coordination and cooperation with and among regional human rights bodies. Second, the greater use of technology is recommended to overcome distance, eliminate a significant amount of travel time and greatly reduce costs.

E. Strengthening the universal periodic review system

29. Although the universal periodic review process has now entered its second cycle, and the participation of civil society organizations was generally embraced and seen as a positive contribution during the first cycle, cooperation with civil society stakeholders, including non-governmental organizations, continues to be a point of disagreement among States.[28] For one thing, while recognizing the multiple opportunities which already exist for stakeholder involvement in the review process, States have found the push for enhanced stakeholder involvement in the process to be a difficult topic to agree upon.[29] One suggestion for enhancing the involvement of civil society organizations in the review process was that the Troika should arrange an informal meeting with the relevant national civil society organizations and national human rights institutions immediately before hearings in the Working Group on the Universal Periodic Review in order to become better informed about recent developments in the countries at issue and to hear critical evaluations of the country reports under review.[30] However, such requests for greater cooperation with stakeholders were not fulfilled for the second review cycle.[31] Second, neither in General Assembly resolution 60/251 nor in Human Rights Council resolution 5/1 is the term "stakeholders" defined.[32] In practice, though, the inclusion of stakeholders in the universal periodic review process is generally associated with non-governmental organizations. This association could be carefully expanded to include other stakeholders, such as the regional

[28] Allehone Mulugeta Abebe, op.cit., p. 26.

[29] Ibid.

[30] Theodor Rathgeber, "New prospects for human rights? The Human Rights Council between the review process and the Arab Spring", German Institute for Human Rights (2012), p. 5.

[31] Ibid.

[32] Ibid.

human rights bodies. A more meaningful discussion on the role of regional human rights bodies and other entities should help to expand the vague definition of "stakeholder" in the review process; and cooperation with a broader variety of stakeholders will definitely enhance that process.

30. The universal periodic review clearly represents an opportunity to foster cooperation between Member States, United Nations mechanisms and civil society. The review process allows us to identify the areas of human rights that the State under review decides to strengthen. There is a lot of practical expertise on human rights in developing countries that have recently experienced massive and systematic violations of human rights, and which were able to recover quite well in terms of their practice of democratic governance and the strengthening of their public policies on human rights. The Council should develop a system of fostering cooperation among Member States in order to ensure that the recommendations accepted after the review are implemented.

31. Another issue that may have to be addressed in this connection is a rationalization, tightening and greater focusing of the large number of recommendations that flow from the review process so as to make them more manageable for the target States to grapple with. This will likely enhance their ability to cooperate as fully as possible in this regard.

F. Improving the follow-up system

32. It is now widely recognized that the United Nations human rights system is beset with significant follow-up problems. There is therefore widespread agreement that, if the goals of international cooperation in the field of human rights are to be more rapidly and robustly realized, the system of follow-up to the recommendations emanating from, inter alia, the special procedures, the universal periodic review process and the treaty bodies requires great improvement. The lack of adequate resources for the special procedures to follow up on their recommendations has been identified as one major weakness in this regard.[33] The provision of such resources to the special procedures and greater coordination of their follow-up efforts with the universal periodic review follow-up processes are among the suggested ameliorative measures.[34]

33. In the latter regard, it is particularly noteworthy that, in providing for specific amendments to the universal periodic review system to be implemented during its second cycle, the Human Rights Council, in resolution 16/21 and decision 17/119, stated that the second and subsequent review cycles should focus on follow-up to the accepted recommendations from the first cycle. However, despite that proposed emphasis on follow-up during the second and subsequent cycles, the follow-up phase is still viewed as the weakest phase of the review process, as there is little structure to guide States other than a suggestion that they provide a voluntary mid-term report to the Council. This lack of structure and the voluntary nature of the mid-term report might affect the effectiveness of international cooperation in the review process. It is therefore suggested that detailed guidelines and/or a model mid-term report be developed by OHCHR to assist States in the preparation of mid-term reports. In addition, rather than merely stating that the submission of mid-term reports by States is voluntary, the Council could attach an opt-out requirement to that process, which could encourage and foster a greater degree of responsiveness among States. States would then be asked to take active steps to opt out of the submission of mid-term reports and States which did not do so by a set date would be taken to have voluntarily assumed an obligation to comply.

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[33] Surya P. Subedi, op.cit., p. 217.

[34] Ted Piccone, op.cit., p. 42.

34. Another suggestion made by some States with regard to follow-up to the universal periodic review is that donor countries that provide foreign aid to other countries should tailor their programmes, at least in part, towards addressing specific review recommendations made to relevant recipient States. It is hoped that this will help create greater and much-needed synergy between international cooperation in the human rights field and international development efforts.

35. With regard to improvement of follow-up to recommendations of the treaty bodies, it has been suggested that there should be better coordinated and more inclusive follow-up procedures, and increased cooperation between States and those bodies. One possibility is the development of a specific inter-committee follow-up mechanism for all the treaty bodies.[35] Cooperation is not limited to ratification, coordination or dialogue, but also concerns compliance with and follow-up on obligations. A monitoring body that would dedicate its entire resources to encouraging cooperation in the follow-up phases of the work of the treaty bodies would greatly enhance this goal. In this connection some reflection on putting existing bodies to use may be required.

IX. Strengthening the voluntary funds

36. There are two funds at issue here: the Universal Periodic Review Voluntary Trust Fund established pursuant to Human Rights Council resolution 6/17 to facilitate the participation of developing countries, particularly least developed countries, in the universal periodic review mechanism; and the Voluntary Fund for Financial and Technical Assistance established pursuant to the same resolution to help, in conjunction with multilateral funding mechanisms, countries implement the recommendations emanating from the universal periodic review, in consultation with, and with the consent of, the country concerned. The contributions that those two funds have made, and can potentially make, to international cooperation in the field of human rights are not in doubt. There is in fact growing demand from States for access to the inadequate financial assistance available from the funds. One indicator of this trend is that, since early in 2013, OHCHR has reviewed more than 20 new requests from various countries for funding from the Voluntary Fund for Financial and Technical Assistance to support their implementation of review recommendations (see A/HRC/24/56, para.20). As at early in 2012, 67 requests were at various stages of being processed or being funded through the Universal Periodic Review Voluntary Trust Fund.[36]

37. It was against this background that the Human Rights Council, in paragraphs 14 and 19 of its resolution 16/21, called for the strengthening of the two funds. In that resolution the Council concluded that the Voluntary Fund for Financial and Technical Assistance should be strengthened and operationalized in order to provide a source of financial and technical assistance to help countries implement the recommendations emanating from their review. The Council also requested that the Universal Periodic Review Voluntary Trust Fund should be similarly strengthened and operationalized.

38. Despite the consensus in the Human Rights Council that both the funds need to be strengthened, there may not be universal agreement as to the exact measures to be taken in this regard. One proposal in respect of both funds is to find more systematic and assured ways of increasing the resources available to them. This is absolutely necessary given the rising and genuine demand for access to the resources of the two funds, the low incidence

[35] Allehone Mulugeta Abebe, op.cit., p. 234.

[36] OHCHR, "Requests for financial assistance under the Voluntary Fund for participation in the UPR mechanism", available at ww.ohchr.org/EN/HRBodies/UPR/Documents/VPUFinancialRequest.pdf.

of State contributions to them and the gross inadequacy of the resources currently available from them. A combination of measures is probably required if the goal of strengthening the resource base of the funds is to be attained any time soon.

39. First, there is a need to shift from the current opt-in voluntary funding system to an equally voluntary opt-out system that could encourage and foster a greater degree of responsiveness among States to the resource needs for the two funds. States which do not belong to the category of least developed countries would be asked to take active steps to opt out of the voluntary obligation to contribute to the funds. States which do not do so by a set date would then be taken to have voluntarily assumed an obligation to fund the relevant fund by a set moderate baseline amount.

40. Second, an expanded notion of what constitutes a contribution to these funds may be required, so that in-kind contributions of human resources and technological inputs are seen as equally important (see A/HRC/19/50). This should be especially the case for the Voluntary Fund for Financial and Technical Assistance, which the Human Rights Council in its resolution 6/17, established explicitly to become a source of both financial and technical assistance. In-kind contributions may take the form of donations of technically qualified and quality-assured human resources from the relevant State. In this connection, the Technical Aid Corps scheme of Nigeria can serve as a model.

41. Third, as many States and stakeholders have suggested, much more attention than hitherto needs to be paid to non-traditional donors and South-South cooperation (see Council resolution 23/3 and A/HRC/19/50). As some States and stakeholders have also urged, broadening the donor base of the two funds is a necessity in the current circumstances and OHCHR should be mandated to enhance its dialogue with the representatives of such countries and bodies. Also, if the notion of what constitutes a donation is expanded to the degree suggested above, the ability of the Council and OHCHR to make progress in this regard will be greatly improved (see A/HRC/19/50).

42. Another proposal with specific regard to the Voluntary Fund for Financial and Technical Assistance is that the complementary role played by a wide range of stakeholders in the implementation of universal periodic review recommendations needs to be further encouraged and supported. That fund should be re-conceived as a fund that supports not only States and regional groups, but a wide range of stakeholders, including national human rights institutions and local civil society groups (A/HRC/24/56, para.35). The argument put forward is that, with greater technical and financial support, those stakeholders can cooperate with States and regional groups to further engage with the universal periodic review process and encourage the implementation of review recommendations. It is also argued by proponents of this approach that supporting those stakeholders will increase the efficiency of the fund. The idea is that certain non-State stakeholders can help facilitate the implementation of certain recommendations more effectively than States. However, the long-standing debate around the legitimacy, transparency and accountability of civil society actors may constitute an obstacle in this regard.

X. Mainstreaming human rights across the global institutional system

43. The need to mainstream human rights of all categories into every aspect of international relations and cooperation (including trade, migration, intellectual property rights, finance, development and security) is regularly reiterated within the United Nations

system, and in particular by the Human Rights Council and OHCHR.[37] While in practical terms the comparative advantage of ensuring that this mainstreaming actually occurs in a robust and rapid way may not, for various reasons, always lie with either the Council or OHCHR, they continue to bear the primary obligation to campaign and push for its realization, notwithstanding all the attendant conceptual and practical difficulties. One suggested practical way in which the Council and OHCHR can add practical value to this mainstreaming project is to enhance the strategy of inter-agency liaison and cooperation that they already utilize in this regard, for example through the United Nations Development Group's human rights mainstreaming mechanism, which is chaired by OHCHR. They could do this by establishing a high-level focal point (either a person or a unit) as appropriate.

XI. Strengthening human rights cooperation in the field of migration

44. The promotion of international human rights cooperation in the field of migration presents an opportunity to affect positively the human rights of the 232 million migrants worldwide through the better coordination of policymaking and protection efforts. The Sixth Meeting of the Global Forum on Migration and Development, which was held in Mauritius in November 2012 on the theme "Enhancing the human development of migrants and their contribution to the development of communities and States", made major recommendations to countries of both origin and destination in order to combat labour exploitation and human trafficking while protecting victims. For his part, the Special Rapporteur on the human rights of migrants, in a report on climate change and migration, stressed the need for coordinated international cooperation on climate-change-induced migration (A/67/299, paras. 90-93). Receiving States should be encouraged to recognize migrant workers as a vulnerable group and to overcome reluctance to grant migrants equal treatment with nationals with respect to the protection of their human rights. Furthermore, receiving and sending States can work together to create demand-driven systems of migration through bilateral or multilateral labour agreements, such as that concluded between Mauritius and Canada. The integration of migrants into their host societies must be seen as a key component of international cooperation in the field of human rights, since it strengthens respect for core universal human rights values.

XII. Conclusions

45. **The following practical suggestions, many of which could form the basis for immediate action by the Council, have been made in the present report:**

(a) The Committee on Non-Governmental Organizations of the Economic and Social Council, currently made up entirely of States, may need to be restructured to include in some advisory capacity the accredited and legitimate representatives of a variety of civil society actors;

(b) Automatic consultative status with the Human Rights Council could be accorded to developing country civil society organizations that already enjoy similar status with their regional or national human rights institutions;

[37] HRC13/012E, 1 March 2013.

(c) The Council should take steps to enhance support for national human rights institutions, such as increasing funding for existing or new staff and for the exchange of knowledge among similarly situated national human rights institutions;

(d) There is a need to find ways of instituting tracking, monitoring and peer-review mechanisms, such as through the negotiation of an enhanced Declaration on the Right to Development and the mainstreaming of the right to development in the universal periodic review process;

(e) South-South cooperation in the area of human rights, both in its regular and triangular forms, should be deepened by supporting greater human rights cooperation among developing or similarly-situated countries, while using existing capacity in one country to help others. The Technical Aid Corps scheme of Nigeria is an excellent example of this form of existing South-South cooperation that can be deepened and expanded with the support of the Council;

(f) Human rights education should be deepened and enhanced by ensuring that it becomes much more of a two-way street than is currently the case;

(g) The global infrastructure for cooperation in the human rights field needs to be strengthened by:

(i) Greater and more effective international human rights cooperation to better protect migrants around the world, for which there is an urgent need;

(ii) Encouraging the universal ratification of human rights instruments and, as far as possible, the inclusion of all States and actors in the process of international cooperation in the human rights field;

(iii) Consolidating and synchronizing State reporting to reduce "reporting fatigue" among States;

(iv) Increasing the resources available to the subsidiary bodies of the Council and its special procedures;

(v) Coordinating and unifying almost all visits by special procedure mandate holders to a particular country, in order to reduce the amount of resources and time host States spend cooperating with them;

(vi) Implementing a voluntary opt-out system for the issuance of standing invitations to special procedures;

(vii) Improving coordination between the Council and regional bodies, and among regional bodies themselves, by encouraging the establishment of focal points in each body to concentrate on this task and enhancing the use of technology in pursuit of this goal;

(viii) Strengthening the universal periodic review mechanism by mandating the Troika to arrange an informal meeting with the relevant national non-governmental organizations and national human rights institutions immediately before hearings in the Working Group on the Universal Periodic Review and making more practical efforts to include other stakeholders, such as the regional human rights institutions, in the process;

(ix) Providing more resources for special rapporteurs to follow up on their recommendations;

(x) Developing detailed guidelines and/or a model report to assist States in the preparation of universal periodic review mid-term implementation reports, and utilizing an opt-out system for encouraging the submission of such reports;

(xi) Encouraging donor countries to tailor their programmes, at least in part, towards addressing specific universal periodic review recommendations;

(xii) Developing a specific inter-committee follow-up mechanism for all the treaty bodies, for example by utilizing an existing body;

(xiii) Shifting from the current voluntary opt-in funding system for the Voluntary Fund for Financial and Technical Assistance and the Universal Periodic Review Voluntary Trust Fund to an equally voluntary but more structured and effective opt-out system;

(xiv) Focusing much more than has been the case on in-kind contributions of human resources and technological inputs to the Voluntary Fund for Financial and Technical Assistance and the Universal Periodic Review Voluntary Trust Fund;

(xv) Broadening the donor base of the Voluntary Fund for Financial and Technical Assistance and the Universal Periodic Review Voluntary Trust Fund to include many more non-traditional donors;

(xvi) Broadening access to the Voluntary Trust Fund for Financial and Technical Assistance to some degree in order to support not only States and regional groups, but also a wider range of stakeholders, such as national human rights institutions and local civil society groups;

(h) There is also a need to enhance the practical steps already being taken by OHCHR towards the mainstreaming of human rights across the global institutional system by encouraging the establishment of intra-institutional focal points, where they do not already exist, in all the relevant trade, migration, intellectual property, security and development organizations, and by setting up a similar office in the Human Rights Council as appropriate.

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Human rights bodies and mechanisms

Progress report of the Human Rights Council Advisory Committee on the issue of the negative impact of corruption on the enjoyment of human rights

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I. Introduction

1. On 13 June 2013, the Human Rights Council adopted its resolution 23/9, in which it requested the Advisory Committee to submit a research-based report to the Council, at its twenty-sixth session being held in June 2014, on the issue of the negative impact of corruption on the enjoyment of human rights, and to make recommendations on how the Council and its subsidiary bodies should consider this issue.

2. During its eleventh session, on 16 August 2013, the Advisory Committee established a drafting group composed of Mr. Saeed Mohamed Al Faihani, Ms. Laurence Boisson de Chazournes, Mr. Mario L. Coriolano, Mr. Latif Hüseynov, Mr. Alfred Ntunduguru Karokora, Mr. Obiora Chinedu Okafor, Ms. Katharina Pabel (Rapporteur), Ms. Anantonia Reyes Prado, Mr. Dheerujlall Seetulsingh, Mr. Ahmer Bilal Soofi and Mr. Imeru Tamrat Yigezu (Chairperson). The Committee tasked the drafting group with the preparation of the said report.

3. At the same session of the Advisory Committee, the drafting group developed a questionnaire, in accordance with Council resolution 23/9, which was disseminated to different stakeholders and had a deadline of 31 October 2013. On 30 October 2013, the deadline for submission of responses was extended to 14 November 2013. As at 4 February 2014, a total of 72 responses had been received: 37 from States, 17 from national human rights institutions, 13 from non-governmental organizations (NGOs) or civil society, and 5 from international or regional organizations or academic institutions.

4. At its twelfth session, held from 24 to 28 February 2014, the Advisory Committee and the drafting group discussed, in both public and private meetings, the "Preliminary research-based report on the negative impact of corruption on the enjoyment of human rights" (A/HRC/AC/12/CRP.3), which had been prepared in the intersessional period by Ms. Pabel, the rapporteur of the drafting group. During the public discussion, a number of members of the Committee as well as States and other stakeholders made comments on the preliminary draft of the report. The Advisory Committee was encouraged to continue its work on the draft report, including by providing useful recommendations therein. On the basis of the discussions of the thirteenth session of the Committee, the draft report was further developed.

II. What is corruption?

A. Definition of corruption and scope of the current study

5. To this day, there is no single, consistent and recognized definition of corruption at the international level. Remarkably, even the United Nations Convention against Corruption[1] does not provide a definition of corruption, even though the purpose of this Convention is specifically to promote and strengthen measures to prevent and combat corruption more efficiently and effectively, and to promote and support international cooperation in the prevention of and fight against corruption.[2] One very common approach

[1] The United Nations Convention against Corruption entered into force in 2005. See http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf.

[2] See article 1 of the United Nations Convention against Corruption.

to the notion of "corruption" is the definition proposed by Transparency International.[3] According to that definition, corruption is "the abuse of entrusted power for private gain".[4] On the one hand, this is a rather broad definition which encompasses a wide range of different behaviours. Unlike the provisions of criminal law, which determine specific offences, the above-mentioned definition is more open. On the other hand, it has been argued that the notion of all three elements of the definition, that is to say "abuse", "entrusted power" and "for private gain", can lead to the exclusion of conducts that should be characterized as corruption too. For instance, the use (or abuse) of illegally claimed power can lead to corruption. Therefore, even this rather broad definition can be too narrow in respect of specific forms of misbehaviour that should also be regarded as corruption.

6. The drafting group did not deem it necessary for the purposes of this report to develop a clear-cut definition of corruption. Instead, it decided to look at the link between corruption and the enjoyment of human rights, for which purpose it focused on the results of the conduct. Moreover, the development of a definition of corruption did not fall within the scope of the request of the Human Rights Council to the Advisory Committee, which was to prepare a report on the negative impact of corruption on the enjoyment of human rights.

B. Different categories of corruption

7. Even though there is no overall agreed definition of corruption, different forms of corruption have been recognized. When looking at corruption from a human rights perspective, it is interesting to differentiate between corruption by the State (corruption in the public sector) and corruption by non-State entities (corruption in the private sector).[5] Corruption in the public sector can occur in government, in administration, in the legislature and in the judiciary. In these contexts, it is clear that the State is responsible for any violation of human rights resulting from the conduct of persons acting in their public capacity. Furthermore, the State can also be responsible for human rights violations caused by corruption in the private sector. The duty of States to protect against human rights violations obliges States to protect people and consequently requires States to prevent human rights violations by third parties. According to this dimension of human rights, States must act (and not only refrain from violating human rights) in order to fulfil their human rights obligations.

8. Recognition of these two categories should not obscure the fact that corruption also takes place in international or global settings. In parallel to the two above-mentioned categories, corruption at the international level occurs in international organizations and in transnational business enterprises. In the first case, international organizations and their member States are responsible for the conduct of the organization, and especially for any resulting violation of human rights. It is more difficult to establish responsibility of specific States for corruption occurring within the transnational business sector. On the one hand, each State is responsible for fulfilling its obligations resulting from human rights treaties or from national constitutional orders. Hence, it has to combat corruption committed by transnational business enterprises acting on its territory. On the other hand, it is quite clear that combating corruption in transnational business enterprises adequately and effectively

[3] Transparency International is an internationally recognized non-governmental organization promoting "a world in which government, politics, business, civil society and the daily lives of people are free of corruption".

[4] See http://www.transparency.org/whatwedo.

[5] See, for example, Sharon Eicher, *Corruption in International Business* (Gower Publishing Company, 2009), p. 4 et seq.

requires transnational and international efforts. The Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework,[6] which were aimed at ensuring the implementation of human rights in relation to business entities, failed to draw the link between business, human rights and corruption. Consequently, the human rights approach to corruption established in the present report can add a new aspect to the existing guidelines.

III. In what respect does corruption have a negative impact on the enjoyment of human rights?

9. A link between human rights and corruption can be established in two different ways:

(a) There can be a violation of human rights through a corrupt act;

(b) There can be a violation of human rights through anti-corruption measures.

10. Although it is important not to forget the second aspect (the violation of human rights through anti-corruption measures), especially if instruments of criminal prosecution are applied in combating corruption, the report — in line with the request by the Human Rights Council — focuses on the first aspect.

11. As a result of developments over the past years, it has now been clearly established that impairment of the enjoyment of human rights is among the negative impacts of corruption. For example, the Office of the United Nations High Commissioner for Human Rights (OHCHR) stated in November 2013:

> "In recent years, United Nations and regional organizations have increasingly recognized the negative impacts of corruption on the enjoyment of human rights."[7]

12. As corruption can occur in many forms and contexts, it is nearly impossible to identify all of the human rights that can be violated by corruption. To give some examples: If there is corruption in the education sector, the right to education can be violated. If there is corruption in the judiciary, the right to access to court and the right to a fair trial can be violated. If there is corruption in the health sector or the social welfare sector, the right to access to medical service or the right to food can be violated (among others). Moreover, the principle of non-discrimination can be affected if a person has to bribe someone in order to get a public merit or access to a public service. It is difficult to find a human right that cannot be violated by corruption.

13. This view is supported by many of the responses to the questionnaire, by different stakeholders. The responses make it clear that corruption has a negative impact on the enjoyment of human rights. They show that a wide range of human rights can be violated by corruption. These include economic and social rights, such as the right to work, the right to food, the right to housing, the right to health, the right to education, and the right to public services; the right to development; and the principle of non-discrimination; as well as civil and political rights, such as the right to a fair trial and the right to public participation. The responses to the questionnaire indicate that nearly every human right can

[6] The Guiding Principles were developed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (see the annex to the final report of the Special Representative to the Human Rights Council (A/HRC/17/31)) and were endorsed by the Council in its resolution 17/4 of 16 June 2011.

[7] OHCHR, *The Human Rights Case Against Corruption* (Geneva, 2013), p. 4.

be affected by corruption; this point is highlighted in the OHCHR response to the questionnaire.

14. As States have different kinds of obligations resulting from their human rights commitments, it is useful to classify the possible violations of human rights caused by corruption according to the different obligations imposed on States:

(a) Firstly, corruption can concern individuals (individual negative impact). There is often a direct violation of the human rights of the individual who is affected by corruption. Depending on the context in which corruption occurs, a wide range of different human rights can be violated. Corruption frequently results in discriminatory access to public services.[8] The impact on an individual can also be the result of an indirect effect from corruption. For example, if public authorities illegally allow the deforestation of land in return for a bribe, then the right to food, the right to housing and the right to health of the people living in the area concerned may be violated;

(b) Secondly, corruption can concern specific, identifiable groups of individuals (collective negative impact). This category includes the effects of corruption that not only affect individuals but also impact upon groups of individuals. For example, corruption can exclude the poor from access to goods and services offered by the administration, or from access to justice. Or, coming back to the example mentioned above, illegal deforestation may affect specific ethnic minorities living in the areas concerned. It can be concluded that marginalized groups such as women, children, persons with disabilities, the elderly, the poor or people belonging to ethnic minorities are particularly affected by corruption. This is especially true in relation to access to public services and welfare, which is often of tremendous importance for people belonging to disadvantaged groups. In its statement made in November 2013, OHCHR cites the undermining of access to justice for disadvantaged groups as an example of the negative impact of corruption on the enjoyment of human rights.[9] Sometimes, corruption is only one element of a human rights violation or one factor aggravating an already existing human rights violation concerning specific groups. For example, if the right to education for marginalized groups is already limited due to discriminatory access requirements, the demand of an official to pay a bribe aggravates the human rights violation. Another example is persons deprived of their liberty who can be victims of corruption and at the same time of torture or other inhumane treatment;

(c) Thirdly, corruption can concern society at large (general negative impact). This means that in addition to the effect that corruption has on individuals or groups, there are also negative impacts upon society at large, whether this is in a national or an international sense. There are two main aspects that are frequently mentioned in discussions of the negative impact of corruption on human rights.[10] The first aspect relates to the financial and economic resources that are affected by corruption. Corrupt practices divert funds from development and therefore imply a reallocation of funds that may interfere with the effective enforcement of human rights, especially for vulnerable people. Corruption reduces the resources available for the progressive realization of economic, social and cultural rights (and therefore undermines States' obligations under article 2 of the International Covenant on Economic, Social and Cultural Rights). The aims of eradicating poverty and providing for sustainable development, as general targets of human rights, are

[8] See, for example, *The Human Rights Case Against Corruption*, p. 4.
See also International Council on Human Rights Policy and Transparency International, eds., *Corruption and Human Rights: Making the Connection* (2009), p. 32 et seq.

[9] *The Human Rights Case Against Corruption*, p. 4.

[10] These aspects are also discussed in the OHCHR response to the questionnaire.

on the verge of being missed. The second aspect relates to the realization of democracy and the implementation of the rule of law. If the authorities of a State are pervaded by corruption, the people's confidence in the government, and eventually in the democratic order and the rule of law, is undermined.

15. Another approach to classifying types of corruption is to differentiate between active and passive corruption. This distinction is discussed, for example, in the commentaries on the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions,[11] which is sponsored by the Organization for Economic Cooperation and Development (OECD). Active corruption means spending money or providing other benefits to achieve undue advantages, whereas passive corruption refers to the receipt of money or other benefits as an undue advantage. The distinction between offering bribes and taking bribes is very clear. Nevertheless, it is doubtful that this distinction may be helpful from a human rights perspective. The focus of this report is on the negative impact of corruption on the enjoyment of human rights and therefore it has a victim-oriented approach. In cases of corruption, it can be difficult to determine whether the victim has taken part in the corrupt act actively or passively. It is even possible that the victim has stood outside the corrupt agreements. For example, where people are forced to pay to access public services, those who pay bribes are active in corruption but they are also victims. For this reason, the OECD anti-bribery convention does not use the term "active bribery", in order to avoid it being misunderstood as implying that the briber has taken the initiative and the recipient is a passive victim. It is more useful to determine which party is the victim in a corrupt setting. In many cases, this can be determined by examining the distribution of power between the parties to the corrupt agreement. Typically, the less powerful or even oppressed party will be the victim.

IV. What is the value in linking corruption and its negative impact with the enjoyment of human rights?

16. Corruption is mainly dealt with in a criminal perspective.[12] Anti-corruption measures — in the national and the international contexts — primarily concentrate on the prosecution of the related criminal offences. International anti-corruption treaties encourage or even oblige the signing States to undertake efforts within their legal order to criminalize certain kinds of behaviour defined as corruption. However the United Nations Convention against Corruption and regional conventions against corruption include preventive measures (e.g. accountability, transparency, and access to public information) that member States are obliged to promote. Without disregarding these efforts, anti-corruption measures are focused on consideration of criminal offences, the necessary sanctions and international cooperation in prosecution. Situating anti-corruption measures within the criminal law narrows the perspective to the perpetrators. The purpose of a criminal proceeding is — roughly speaking — to determine who the person is who is responsible for the offence. Focusing criminal proceedings on the perpetrator can lead to a loss of focus on the victim of the corruption. The position of those affected by corruption is not very strong in criminal

[11] Available from http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf. The Convention was adopted by the Negotiating Conference on 21 November 1997 and entered into force on 15 February 1999. See also the "Seventh annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" (CAT/C/52/2), para. 72 et seq.

[12] Leonie Hensgen, "Corruption and human rights – making the connection at the United Nations", in the *Max Planck Yearbook of United Nations Law*, Armin von Bogdandy and Rüdiger Wolfrum, eds., vol. 17, pp. 197–219 (200) (Brill and Nijhoff, 2013).

proceedings. Furthermore, the criminal approach does not offer ways of addressing the structural problems caused by corruption. It is concentrated, by its very nature, on the single offence, and typically cannot deliver the collective impact and the general impact referred to in this report.

17. Corruption can also be combated by applying remedies from private law. This approach is quite common among States. In international law, the Civil Law Convention on Corruption, which was adopted by the Council of Europe in 1999,[13] deals, inter alia, with compensation for damage, liability, the validity of contracts and the protection of employees, and therefore focuses on the consequences of corruption in private law. One distinction between the criminal law approach and the private law approach in the fight against corruption is that the latter addresses the impact of corruption on the person concerned and aims to obtain compensation.

18. A human rights perspective on the impact of corruption can add an approach that moves the victims to the centre of the fight against corruption. It does so by highlighting the negative impacts that corruption brings to the individual concerned, to groups of individuals typically affected by corruption (which are very often marginalized groups), and to society at large. Linking corruption and human rights can show the social implications — the effects that corruption has on human lives. It can help people to make connections between corruption and problems that they suffer from in their lives, and can be an important way of making corruption a public issue. In this way, the social impact of corruption is made visible; it generates awareness in society about the consequences of this scourge and creates new alliances in the fight against corruption.

19. Moreover, the human rights perspective on the negative impact of corruption reveals that the State bears ultimate responsibility for corruption. This responsibility means, as a first step, abstaining from corruption in order to avoid human rights violations. As a second step, the State's responsibility with regard to human rights means reacting to the negative impact of corruption in order to fulfil human rights obligations. In the latter context, criminal prosecution is one instrument in combating corruption and its negative impact on the enjoyment of human rights. Criminal prosecution is, however, not an effective instrument for resolving the negative consequences of corruption for the individual, for specific groups or for society in general. Consequently, the human rights perspective on the negative impact of corruption emphasizes the State's obligation to take measures against the negative effects of corruption. Furthermore, preventive measures against corruption are strengthened by combining them with human rights. By integrating a human rights perspective into anti-corruption strategies, it also becomes an obligation to implement preventive policies in areas such as transparency, affidavits, laws on access to public information and external controls.

20. Corruption can lead to a human rights violation directly or indirectly. Corruption may directly violate a human right when a corrupt act is deliberately used as a means to violate a right or when a State acts or fails to act in a way that prevents individuals from enjoying that particular right. In other situations, corruption will be an essential factor contributing to a chain of events that eventually leads to the violation of a right. In this case, the right is violated by an act that derives from a corrupt act, and the act of corruption is a necessary condition for the violation. This situation will arise, for example, if public officials allow the illegal importation of toxic waste from other countries in return for a bribe, and that waste is placed in, or close to, a residential area. The rights to life and health of residents of that area would be violated, indirectly, as a result of the bribery.[14] Another

[13] Civil Law Convention against Corruption, ETS No. 174.

[14] Contribution by Mr. Alfred Karokora, Member of the Advisory Committee.

example is the situation of prisoners who are forced to pay bribes in order to avoid ill-treatment or to enjoy good conditions of detention; this kind of corruption affects a whole group indirectly.

21. Furthermore, there are parallels between the main anti-corruption principles (such as participation, transparency, access to information, and accountability) and the scope of human rights (such as freedom of expression and freedom of the media, access to information, and the principle of non-discrimination). Therefore, strengthening the enjoyment of human rights in general, and of specific political rights and the principle of non-discrimination in particular, is a valuable instrument in combating corruption. Whereas combating corruption through criminal law and private law means taking repressive and remedial measures, the promoting and strengthening of human rights is a preventative anti-corruption measure.

22. The need to integrate preventative measures into efforts against corruption has been clearly emphasized. Furthermore, promoting and strengthening human rights can, in the long term, contribute to a well-informed and emancipated civil society that is more and more able to reject corruption in every form and in all circumstances. According to OHCHR: "An efficient anti-corruption strategy must be informed by key human rights principles. An independent judiciary, freedom of the press, freedom of expression, access to information, transparency in the political system and accountability are essential both for successful anti-corruption strategies and for the enjoyment of human rights."[15]

23. The linkage between anti-corruption measures and human rights can also promote access to human rights mechanisms to combat corruption. A wide range of mechanisms exists for monitoring compliance with human rights at the national, regional and international levels. By drawing a link between acts of corruption and violations of human rights, new opportunities for litigation or monitoring can be identified.[16]

24. Combining strategies from the fight against corruption with strategies for the promotion of human rights can have a dual effect. On the one hand, human rights can form a part of an anti-corruption strategy via the use of human rights mechanisms. On the other hand, combating corruption is, in itself, a way of preventing human rights violations. By promoting the elements of good governance (such as political rights, transparency and accountability), human rights and anti-corruption efforts can be mutually reinforcing.[17] For example, the ability to promote and protect civil and political rights rests upon effectively combating political and judicial corruption (and vice versa). Transparency and access to information empower individuals to make informed decisions — from exercising their voting rights, to monitoring State expenditure. At the same time, creating such openness limits opportunities for abuses by politicians, the police and judges. By showing the impact of corruption on human rights, the reputational cost to businesses is too high, new risks are created, and they are thus provided with incentives to minimize their involvement in corruption. When accountability mechanisms are weak or non-existent, it becomes easy for corruption and for human rights violations to occur.[18]

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[15] *The Human Rights Case Against Corruption*, p. 5.

[16] International Council on Human Rights Policy and Transparency International, eds., *Integrating Human Rights in the Anti-Corruption Agenda: Challenges, Possibilities and Opportunities* (2010), p. 45 et seq.

[17] *The Human Rights Case Against Corruption*, p. 5.

[18] Contribution by Mr. Alfred Karokora, Member of the Advisory Committee; see also Sharon Eicher, *Corruption in International Business*, p. 8 et seq.

V. Are there experiences of integrating a human rights perspective into the fight against corruption?

25. Regarding the questionnaire responses that were received from States, human rights and anti-corruption institutions, NGOs and other stakeholders, it is pertinent to consider whether there were any experiences of integrating a human rights perspective into the fight against corruption. There are different institutional approaches to dealing with corruption. In a number of States, independent agencies have been charged with counteracting corruption. Other States, in their replies, make reference to agencies or departments of the government. The structure and organization of such agencies or other specialized institutions varies from State to State. In some States, NGOs are an important instrument in combating corruption. In addition, the inspection bodies (supreme audit institutions, for instance) play an important role; they are interested in human rights–based approaches and work collaboratively with civil society and human rights organizations. Other States mention criminal prosecution or human rights institutions as the main instruments used in the fight against corruption.

26. With regard to the integration of a human rights perspective into the fight against corruption via cooperation between anti-corruption institutions and human rights institutions, the questionnaire responses from States give a multifaceted picture. In some cases, it is established that no cooperation is taking place or that no effective cooperation exists. Often, it is said that there is no formal cooperation but that there are informal contacts, for example for meetings, workshops, lectures, common trainings, or exchanging information. As for cooperation on a more formal basis, inter-institutional working groups are mentioned. Some States speak of collaboration between the related institutions occurring on a case-by-case basis. In sum, many States emphasize the need for and the importance of cooperation between the anti-corruption institutions and human rights institutions, but at the moment, this cooperation is informal and ad hoc. This same result is seen in the questionnaire responses from national human rights institutions and also in some responses from NGOs.

27. Regarding the questionnaire responses from NGOs, it is notable that some of them quote examples of collaboration between anti-corruption institutions and human rights institutions. However, no information is provided about the ways in which this cooperation is taking place. The need for and importance of such cooperation is nevertheless stressed in some responses.

28. In this regard, the response from the Council of Europe should be highlighted. It provides an illustrative example of integrating a human rights perspective into the fight against corruption. As examples, the Council of Europe listed the Civil Law Convention on Corruption (mentioned earlier) and the establishment of the *Groupe d'États contre la corruption*, which invited the Council of Europe Commissioner for Human Rights to share his views on the impact of corruption on the effectiveness of human rights. In his view, the protection of victims of corruption, as well as of persons who report suspicions of corruption, should be seen as important tools in promoting both human rights and ethical behaviour.

29. The substance of the questionnaire responses from States and other stakeholders indicates that human rights play an important role in anti-corruption strategies. What is emphasized by some respondents is the importance of a well-informed and participatory society in order to combat corruption. This outcome will be aided by human rights education, which can raise awareness of corruption.

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Agenda item 4
Human rights situations that require the Council's attention

Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, Marzuki Darusman*

Summary

The Special Rapporteur shares his initial thoughts about the direction he intends to take in fulfilling his mandate, building on the findings and recommendations of the commission of inquiry on human rights in the Democratic People's Republic of Korea. He stresses the international law implications of the commission's findings and the responsibility of the international community to protect.

The Special Rapporteur also highlights the responses by the Democratic People's Republic of Korea, including some opportunities for engagement presented by the Government's latest position on the recommendations made at the universal periodic review. He also discusses the qualitative differences in responses required of the Member States, neighbouring States and other States concerned, and the United Nations system, involving also the realignment and strengthening of civil society work and people-to-people contacts.

* Late submission.

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I. Introduction

1. The present report is the first to be submitted by the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea to the Human Rights Council since the commission of inquiry on human rights in the Democratic People's Republic of Korea completed its work in March 2014.

2. In its resolution 22/13, the Human Rights Council decided to establish the commission of inquiry for a period of one year to investigate the systematic, widespread and grave violations of human rights in the Democratic People's Republic of Korea. It also extended the mandate of the Special Rapporteur for a period of one year, and designated him to be one of the three commissioners. The commission presented its final report to the Council at its twenty-fifth session.[1] The Special Rapporteur, in a note,[2] informed the Council that he would submit his regular report to the Council at its twenty-sixth session in order to take into account the follow-up and subsequent developments after the commission had completed its mandate.

3. The Special Rapporteur prepared the present report in the wake of resolution 25/25 on the situation of human rights in the Democratic People's Republic of Korea adopted by an overwhelming majority by the Human Rights Council on 28 March 2014. In the resolution, adopted by a recorded vote of 30 in favour, 6 against and 11 abstentions, the Council called upon all parties concerned, including United Nations bodies, to consider implementation of the recommendations made by the commission of inquiry in its report in order to address the dire human rights situation in the Democratic People's Republic of Korea. It also requested the Special Rapporteur to submit regular reports to the Human Rights Council and to the General Assembly on the implementation of his mandate, including on the follow-up efforts made in the implementation of the recommendations of the commission of inquiry.

4. In the present report, the Special Rapporteur shares his initial thoughts about the direction he intends to take in fulfilling his mandate, building on the findings and recommendations of the commission of inquiry. In this sense, the report is not a regular update of the situation of human rights as such, but rather indicates the way forward. The Special Rapporteur firmly believes that the work of the commission has turned a page in decades-long efforts to address the situation of human rights in the Democratic People's Republic of Korea, and provided a unique opportunity for the international community to help to make a difference in the lives of its people, including the victims aboard. There is no turning back; it cannot be "business as usual" as the international community presses on to ease the ongoing suffering of the people and to ensure accountability, justice and reconciliation.

5. The Special Rapporteur believes that any discussion about the report submitted by the commission of inquiry would be incomplete without paying tribute to the victims who have survived and courageously spoken up about unspeakable atrocities, and bearing in mind those who are still suffering, and the beleaguered population of 20 million who may still fall victim to the widespread human rights violations that affect every aspect of daily life in the Democratic People's Republic of Korea. In many ways, the commission's report was a report of the victims and their courage to bear witness, to give voice to those who have perished or have not been able to tell their story.

[1] A/HRC/25/63.
[2] A/HRC/25/62.

II. A new phase of work

6. The work performed by the commission of inquiry should be seen as the beginning of a process, not the end. The Special Rapporteur considers that the post-commission era presents a new phase for the human rights of the people of the Democratic People's Republic of Korea and the many victims from other countries, and requires a decisive change in the approach going forward. For more than 50 years, the question of the Democratic People's Republic of Korea has always been regarded as a political issue within the United Nations, as shaped by its States Members, and addressed in a political manner. This would reflect and fluctuate in accordance with the international political situation. What has now happened with the report of the commission is that the situation in the Democratic People's Republic of Korea has been decisively placed on the track of international law. This is not to say that the issue has been completely moved away from the political arena, where its security dimension remains of great concern; the commission's report has, however, demonstrated the linkage between the internal situation with regard to the almost total denial of human rights and the security dimensions which, from time to time, manifest themselves in terms of aggressive behaviour by the State. With the commission's findings, these political and security issues can only be settled or closed if these human rights violations are dealt with in a decisive manner. The commission clearly stated that it had reasonable grounds to conclude that crimes against humanity continue and that they have been taking place for decades. A core element in moving forward therefore is to pursue this matter from the perspective of international criminal justice and human rights law.

7. The phase is also new in several other important aspects. The first concerns the revelation of the truth. The second has to do with how the leadership of the Democratic People's Republic of Korea handles this revelation, as much as the heightened international scrutiny of its situation of human rights. The third focuses on the qualitative differences in responses that are required of Member States, neighbouring States and other States concerned, the United Nations system and its relevant bodies, other stakeholders and the international community as a whole. This will also require a realignment of and strengthening in the work of civil society and people-to-people contacts. The Special Rapporteur believes that all these aspects are interrelated and changes in one will inevitably affect those in another.

III. Revelation of the truth

8. One of the most striking observations that the Special Rapporteur has made throughout his mandate and during his work with the commission of inquiry is that, for so many years, the Democratic People's Republic of Korea was able to conceal the true magnitude and gravity of its atrocities against its own people. In the past decade, the General Assembly and the Human Rights Council (and the Commission on Human Rights before 2006) adopted resolutions every year in which they expressed their deepest concern at the systematic, widespread and grave violations of civil, political, economic, social and cultural rights in the Democratic People's Republic of Korea. Year after year, the Government rejected those resolutions, denied such violations and refused to grant access to the international community to verify the situation.

9. In his report submitted to the Human Rights Council in 2013,[3] in which the Special Rapporteur made a comprehensive review of more than 60 United Nations reports and resolutions on the situation of human rights in Democratic People's Republic of Korea

[3] A/HRC/22/57.

since 2004, he stated clearly that this status quo could not be allowed to continue in the face of such violations, such international condemnation and such non-cooperation. The establishment of the commission of inquiry, and its subsequent findings and recommendations, must also be seen in this context. It was the much-needed breakthrough that the United Nations High Commissioner for Human Rights, civil society and the Special Rapporteur himself had called for when they advocated for an international inquiry mechanism to investigate and more fully document the grave, systematic and widespread violations of human rights in the Democratic People's Republic of Korea as a step towards accountability.

A. Crimes against humanity

10. The commission of inquiry found that crimes against humanity had been and continued to be committed by the institutions and officials of the Democratic People's Republic of Korea, pursuant to policies established at the highest level of the State. These were not mere excesses of the State, but essential components of its political system. The gravity, scale and nature of these violations revealed a State that has no parallel in the contemporary world. The State strategically uses surveillance, coercion, fear and punishment to preclude the expression of any dissent. It uses executions and enforced disappearance to political prison camps to terrorize the population into submission. The State's violence has been externalized through State-sponsored abductions and enforced disappearances of people from other nations. These international enforced disappearances are unique in their intensity, scale and nature.[4]

11. Anyone in the Democratic People's Republic of Korea who is considered a threat to the political system and the leadership can become a target of these crimes against humanity. The primary victims included the estimated 80,000 to 120,000 inmates of the political prison camps; the inmates of the ordinary prison system, including the political prisoners among them; Christian and other religious believers, as well as others considered to introduce subversive influences; persons who try to flee the country, including persons forcibly repatriated by China; starving populations, and persons from Japan, the Republic of Korea and other countries who were abducted or denied repatriation, and became victims of international abductions and enforced disappearances.[5] The ongoing plight of the prisoners held incommunicado in the political prison camps, whose existence the Government continues to deny, is cause for deep concern. The Special Rapporteur stresses that these camps must be shut down and that the prisoners must be released without delay.

12. Since the commission of inquiry released its report, the Special Rapporteur has been asked repeatedly about which of the commission's findings could be considered "new", given the previous documentation by civil society actors and the United Nations. It is a valid question. The Special Rapporteur believes that the answer explains why the revelation of the truth by the commission has been so powerful.

13. Firstly, the findings are the result of an intensive, systematic and transparent investigation that began with an open call for submissions by any party with information and documentation on the situation of human rights in the Democratic People's Republic of Korea. The Democratic People's Republic of Korea itself, neighbouring States and other States concerned, State and non-State actors, civil society and individuals all had ample

[4] A/HRC/25/63, paras. 80 and 83.

[5] Ibid., paras. 67, 72 and 79. See also the report of the detailed findings of the commission of inquiry on human rights in the Democratic People's Republic of Korea (available from www.ohchr.org/EN/HRBodies/HRC/CoIDPRK/Pages/ReportoftheCommissionofInquiryDPRK.aspx), paras. 1024, 1160-1163.

opportunity to provide information throughout the process. Regrettably, the commission received no cooperation from the Democratic People's Republic of Korea and had no access to the country, despite having made numerous efforts to contact the Government. Some sceptics have sought to discredit the process followed by the commission, claiming that its findings were based solely on information provided by defectors; the Special Rapporteur, however, draws their attention to the fact that, in addition to the 80 victims and other witnesses who testified through public hearings and the more than 240 confidential interviews conducted, the commission also reviewed satellite images, internal documents brought out of the Democratic People's Republic of Korea, as well as videos, photographs and written materials, including 80 submissions from various sources. The patterns of violations documented by the commission in its report were based on first-hand testimony from multiple witnesses, and corroborated by other information.

14. Investigating the nine patterns of violations identified by the Special Rapporteur in his report submitted in 2013,[6] the commission of inquiry categorized the systematic, widespread and gross human rights violations that had been and continued to be committed into six categories: arbitrary detention, torture, executions and enforced disappearance to political prison camps; violations of the freedoms of thought, expression and religion; discrimination on the basis of State-assigned social class, gender, and disability; violations of the freedom of movement and residence, including the right to leave one's own country; violations of the right to food and related aspects of the right to life; and enforced disappearance of persons from other countries, including through international abductions.

15. It was on the basis of this body of testimony and other information received concerning each of these patterns of violations that the commission determined that its findings constituted reasonable grounds to conclude that crimes against humanity had been committed in the Democratic People's Republic of Korea so as to merit a criminal investigation by a competent national or international organ of justice.[7] It found that these crimes against humanity entailed extermination, murder, enslavement, torture, imprisonment, rape, forced abortions and other sexual violence, persecution on political, religious, racial and gender grounds, the forcible transfer of populations, the enforced disappearance of persons and the inhumane act of knowingly causing prolonged starvation. The commission further found that crimes against humanity were ongoing in the State "because the policies, institutions and patterns of impunity that lie at their heart remain in place".[8]

B. Following the track of international law

16. The Special Rapporteur cannot emphasize enough the significance of the international law implications of the revelation of the truth achieved by the commission of inquiry. For the first time ever, an investigation mandated by the highest inter-governmental body within the United Nations system responsible for human rights, namely, the Human Rights Council, documented and concluded that a number of long-standing and ongoing patterns of systematic and widespread violations in Democratic People's Republic of Korea met the high threshold required for proof of crimes against humanity in international law.[9] The perpetrators enjoy impunity because they act in accordance with State policy. The Democratic People's Republic of Korea is unwilling to implement its international obligation to prosecute and bring the perpetrators to justice.

[6] A/HRC/22/57.
[7] Ibid., para. 74.
[8] Ibid., para. 76.
[9] Ibid., para. 85.

17. The main perpetrators, as documented by the commission of inquiry, include officials of the State Security Department, the Ministry of People's Security, the Korean People's Army, the Office of the Public Prosecutor, the judiciary and the Workers' Party of Korea, who are acting under the effective control of the central organs of the Workers' Party of Korea, the National Defence Commission and the Supreme Leader of the Democratic People's Republic of Korea.[10]

18. The findings of the commission of inquiry, which indicated that the Democratic People's Republic of Korea, as a State Member of the United Nations, has committed crimes against humanity over a span of several decades, raised questions regarding the accountability of the international community. The commission recalled that the leaders gathered at the 2005 World Summit of Heads of State and Governments had reaffirmed that each individual State had the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity, and that, in addition, world leaders had pledged to uphold the complementary responsibility to protect held by the international community.[11] The commission also found that, in the light of the manifest failure of the Democratic People's Republic of Korea to protect its population from crimes against humanity, the international community, through the United Nations, bears the responsibility to protect the population of the Democratic People's Republic of Korea from crimes against humanity using, first and foremost, appropriate diplomatic, humanitarian and other peaceful means. The responsibility of the international community was further warranted by the fact that the crimes of the Democratic People's Republic of Korea against humanity have an impact on many persons from other States, who were systematically abducted and who continued to suffer enforced disappearance, along with the families that they had left behind. In a number of these cases, the abductions involved blatant violations of the territorial sovereignty of other States.[12]

19. The international community must set in train immediate, impartial and just action to secure accountability, fulfil the responsibility to protect, put human rights first and stop grave human rights violations, in accordance with international law.

C. Contextual factors affecting justice and reconciliation on the Korean peninsula

20. The Special Rapporteur draws particular attention to one of the main findings of the commission of inquiry that has, however, generated less discussion than it deserves: the historical and political context of human rights violations in the Democratic People's Republic of Korea. The commission emphasized that the current situation of human rights in that country had been shaped by the historical experiences of the Korean people. Confucian social structures and the experience of the Japanese colonial occupation had to some degree informed the political structures and attitudes prevailing in the country today. The division imposed on the Korean peninsula, the massive destruction caused by the Korean War and the impact of the Cold War had engendered "an isolationist mindset and an aversion to outside powers that are used to justify internal repression".[13]

21. The Special Rapporteur believes that genuine recognition of this historical and political context is essential for the international community if it is to address meaningfully the situation human rights in the Democratic People's Republic of Korea. Among its recommendations, the commission made stated clearly that the international

[10] Ibid., para. 24.
[11] Report of the detailed findings of the commission of inquiry (see footnote 5), para. 1024.
[12] Ibid., para. 1025.
[13] A/HRC/25/63, para. 25.

community had to accept its responsibility to protect the people of the Democratic People's Republic of Korea from crimes against humanity, because the Government had manifestly failed to do so. In particular, this responsibility had be accepted in the light of the role played by the international community (and by the great powers in particular) in the division of the Korean peninsula and because of the unresolved legacy of the Korean War. These unfortunate legacies helped not only to explain the intractability of the situation of human rights but also why an effective response was imperative.[14]

22. In a press statement issued on 15 November 2013, upon concluding an official visit to the Republic of Korea in November 2013,[15] the Special Rapporteur stressed the need to look at issues related to human rights in the Democratic People's Republic of Korea with a perspective paving the way for justice and reconciliation on the Korean peninsula. In the light of the findings of the commission of inquiry, the Special Rapporteur reiterates that the primary responsibility for the human rights of the people in the Democratic People's Republic of Korea lies with the Government. The international community must address the Government's failure to do so and ensure accountability. Meanwhile, the international community cannot shy away from external factors, such as security concerns, inter-Korean relations and the regional dynamics around the peninsula and beyond, that also affect the considerations and the severely restrictive policies of the leadership of the Democratic People's Republic of Korea. Unless these factors are taken into account, there will be no meaningful steps towards a settlement of the Korean question, which has a direct bearing on the human rights of the people on the Korean peninsula.

IV. Responses of the Democratic People's Republic of Korea

23. By providing a more holistic picture of the wide-ranging and gross human rights violations committed in the Democratic People's Republic of Korea, the findings of the commission of inquiry put an end to the decades-long cover-up of the true magnitude and gravity of the State's atrocities against its own people. Now, not only does the world but also the leadership of the Democratic People's Republic of Korea know that the truth has been revealed, and that it is under increased scrutiny. This is powerful and can act as both a deterrent and an incentive to change course. This is one of the many reasons why the Special Rapporteur believes that change is possible.

24. Although the Democratic People's Republic of Korea has categorically rejected the commission of inquiry, the Special Rapporteur has observed some indication that it has been responding to the revelations; for instance, family reunions in the Korean Peninsula resumed in February 2014 for the first time since 2010.[16] The announcement came earlier and preparations were under way, while the reunions were held shortly after the commission made its report public on 17 February 2014. A few days before the commission presented its report to the Human Rights Council and engaged in an interactive dialogue with the Council on its findings and recommendations on 17 March 2014, the Yokota family from Japan, after years of anguish since the abduction of their 13-year-old daughter Megumi in 1977, was able to meet and spend some time in Mongolia with their granddaughter and great granddaughter, who were born in Democratic People's Republic of Korea.[17] Some might see these as coincidences. The Special Rapporteur believes that the

[14] Ibid., para. 86.

[15] Available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13993&LangID=E.

[16] "Tearful Korean reunions begin, first since 2010", Associated Press, 20 February 2014, available at http://bigstory.ap.org/article/koreas-begin-reunions-separated-families.

[17] "Meeting with abductee's daughter could propel Tokyo-Pyongyang talks", *Asahi Shimbun*, 17 March 2014, available at http://ajw.asahi.com/article/asia/korean_peninsula/AJ201403170078.

revelation of the truth, international scrutiny and sustained pressure have had some initial effects and will continue to do so.

A. Universal periodic review

25. The Democratic People's Republic of Korea has always maintained its procedural objection to any country-specific mandate, citing this as the reason for which it refuses to cooperate with the Special Rapporteur. The State has nonetheless been willing to engage in the universal periodic review mechanism, which examines the situation of human rights in all States Members of the United Nations. The Democratic People's Republic of Korea participated in its first review in December 2009 and rejected 50 recommendations immediately afterwards. For more than four years thereafter, it failed to identify any recommendations that enjoyed its support or to report on any progress of their implementation.[18] The General Assembly also, in its resolution 65/225, adopted at the end of 2010, expressed its serious concern at the refusal of the Government of the Democratic People's Republic of Korea to articulate the recommendations that enjoyed its support following its review, and regretted the lack of actions taken to implement the recommendations contained in the final outcome. Despite similar concerns expressed by other parties, for three more years the Government maintained its ambiguous stance on the recommendations. It was only after the presentation of the commission's findings before the Human Rights Council that the leadership of the Democratic People's Republic of Korea made any positive progress with regard to the universal periodic review.

26. The second review of the Democratic People's Republic of Korea was held on 1 May 2014. A few days before the review, the Government indicated that its position was that the State accepted 81 of the 167 recommendations made during the first cycle of the universal periodic review in December 2009.[19] The Special Rapporteur notes the Government described the 81 accepted recommendations as "recommendations that are implemented or currently under implementation". These recommendations mostly related to economic and social rights, women, children, a rights-based approach to development, and the reunion of separated families in the Korean peninsula. They also included some civil and political rights, which the Government claimed were being implemented. Notably, the Government also accepted recommendations to submit reports to the Human Rights Committee and the Committee on the Elimination of Discrimination against Women. One of the recommendations accepted specifically called upon the Government to take measures to facilitate family reunification, as recommended by the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea.[20] Although belated, these are welcome developments. The Special Rapporteur will continue to seek to engage the Democratic People's Republic of Korea to ensure the implementation of the above recommendations, and encourages other Member States to do likewise.

27. The Working Group on the Universal Periodic Review adopted the second review of the Democratic People's Republic of Korea on 6 May 2014. In its immediate response to the second review, the Government rejected 83 of the 268 recommendations made; for the others, the Government would provide responses in due time, but no later than the twenty-seventh session of the Human Rights Council".[21] If this were indeed to eventuate, it would mark a significant improvement in the Government's cooperation with the universal periodic review mechanism.

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[18] A/HRC/13/13.

[19] See annex I on the website of the Office of the High Commissioner at www.ohchr.org/EN/HRBodies/UPR/Pages/KPSession19.aspx.

[20] A/HRC/13/13, para. 90, recommendation 78.

[21] See A/HRC/27/10.

28. The Special Rapporteur urges Member States and all parties concerned, including the United Nations system and civil society, to seize the opportunities for engagement that the latest developments in the universal periodic review have created. Firstly, the international community must not take the recommendations accepted during the first review at face value. Whether bilaterally or through regional and international platforms, efforts must be made to ensure that the recommendations are implemented and that they bring about a genuine improvement in the daily life and human rights of the people. Secondly, the international community must encourage the Democratic People's Republic of Korea to accept and implement more recommendations from the second review in a timely manner, in any case no later than the twenty-seventh session, in September 2014, when the Council is scheduled to adopt the report of the Working Group, and to commit to reporting on the progress of their implementation.

B. Opportunities for engagement

29. In order to facilitate the above-mentioned process, the Special Rapporteur summarizes below the recommendations accepted by the State under review,[22] which represent an opportunity for engagement, in particular those recommendations that are concrete and the implementation of which is verifiable.

1. Cooperation with United Nations human rights mechanisms

30. With regard to the scope of international obligations and the State's cooperation with United Nations human rights mechanisms, the Democratic People's Republic of Korea has indicated that the recommendation that it fully comply with the principles and rights enshrined in the Universal Declaration of Human Rights, the two international covenants, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women, to which it is party (recommendation 3) had been implemented or was currently being implemented. It would also consider and envisage acceding to the Convention on the Rights of Persons with Disabilities (recommendations 2 and 18) and improve its cooperation with United Nations treaty bodies by agreeing on timelines for submitting overdue reports, in particular to the Human Rights Committee and the Committee on the Elimination of Discrimination against Women (recommendation 41). It would also pursue cooperation with the thematic procedures of the Human Rights Council (recommendation 54).

2. Violence against women: rights of vulnerable groups

31. The Democratic People's Republic of Korea indicated that it had accepted several concrete recommendations that it combat violence against women, protect the rights of women, children, persons with disabilities and the elderly, and provide for the most vulnerable groups (recommendations 17, 19, 20, 38, 56, 57, 58, 60, 61, 64, 66, 67, 86, 87, 96, 98 and 99); for example that it pass legislation specifically dealing with violence against women, including domestic violence, providing for prosecution of individuals committing acts of violence against women (recommendation 19); increase the number of women in management posts and in decision-making processes (recommendation 20); ensure that the rights of women, children and persons with disabilities are more effectively realized through the implementation of a number of specific national strategies (recommendation 38); provide all children with equal opportunities to study and give them access to higher education based on their talent and individual capability (recommendation 60); and give

[22] See A/HRC/13/13, para. 90.

priority to vulnerable groups in the distribution of international assistance (recommendation 61).

32. Several of the recommendations accepted by the State concern protection issues and raising public awareness, with particular reference to victims of trafficking in persons, for example, that it establish a government task force to create protection programmes, provide resources for recovery and promote prevention through education and media campaigns (recommendation 27); step up measures to address comprehensively the problem of trafficking and violence against women, including by increasing public awareness campaigns (recommendation 69); and strengthen measures, including through international dialogue and cooperation, to combat human trafficking and provide appropriate assistance to victims of trafficking (recommendation 68). The Special Rapporteur believes, however, that such measures should be calibrated carefully to avoid restricting freedom of movement and the right to leave the country.

3. Structural reforms: the rights to food, health and education

33. Recommendations concerning the rights to food, health, education, water economic and social rights in general, humanitarian cooperation, and development also featured prominently among those accepted (recommendations 30-36, 60, 88-94, 96, 97, 99, 100-105, 109, 112-115 and 117). They included recommendations concerning the implementation of a national plan of action of education for all with a view to improving the quality of the system of 11 years of compulsory, free, universal education, increasing progressively the necessary resources allocated for this purpose (recommendation 30); securing the right to food for all citizens, in particular in order to secure the right to health for children (recommendation 90); taking the steps necessary to ensure impartial access to adequate food, drinking water and other basic necessities for all people within the State's jurisdiction, including vulnerable groups (recommendation 92); and strengthening cooperation with the United Nations and its mechanisms on human rights and humanitarian matters with a view to building national capacities and improving the people's well-being (recommendation 114). In particular, the Government also indicated that it had accepted the recommendation that the State continue efforts to reinvigorate the national economy by, inter alia, allowing more freedom for people to engage in economic and commercial activities (recommendation 88).

34. On structural reforms and the allocation of resources, the Government indicated that it had accepted recommendations to invest sufficient resources to promote and protect the principle of equality in the fields of work, education and health (recommendation 59); to allocate resources equitably and to implement food security policies, including through sustainable agricultural practices and reduced State restrictions on the cultivation and trade of foodstuffs (recommendation 94); to increase resources allocated to the education sector for better quality of education, and to encourage the authorities to continue their efforts in this area (recommendation 103); and to work on overcoming the obstacles related to economic problems and the scarcity of resources through cooperation with the international community and the United Nations so as to ensure the promotion and protection of human rights (recommendation 115). The Special Rapporteur is keen to see these commitments translated into a real readjustment of the State's *songbun* military first policy, which prioritizes militarization in the allocation of limited resources.

4. Family reunions

35. The Democratic People's Republic of Korea also indicated that it had accepted to guarantee separated families' fundamental right to know the fate of their family members across the border and to communicate and regularly meet together; do everything possible, in cooperation with the Republic of Korea, to ensure that the maximum number of meetings of separated families is organized, take concrete steps to continue the process of family

reunification, "because for the elder generation even a delay of one or two years means that their chance of seeing their relatives may be lost forever"; and adopt measures to facilitate family reunification, as recommended by the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea (recommendations 75-78). Of the relevant recommendations made by the current mandate holder and the previous one over the years, the Special Rapporteur draws special attention to the recommendation that family reunions become a sustained process moving beyond short-term meetings to life-long reunification,[23] and looks forward its concrete implementation.

5. Freedoms, treatment of persons under detention, and accountability

36. The Special Rapporteur is seriously concerned at the number of recommendations relating to freedoms, fair trial, the treatment of persons in detention and the accountability of those committing human rights abuses that the Government indicated as accepted and already implemented or currently being implemented. These recommendations included that the State continue to prevent and to punish human rights abuses by law enforcement officials (recommendation 61); give all in detention a fair trial (recommendation 72); train professionals involved in the judicial system on the relevant international standards on a fair trial and rule of law (recommendation 73); ensure that all persons deprived of their liberty are treated with humanity and with respect for the inherent dignity of the human being (recommendation 74); allow the exercise of the right to the freedom of expression and the freedom of association and assembly by fostering and facilitating civil society entities and enabling them to obtain status under law (recommendation 79); and take further steps to support freedom of expression and the right to freedom of movement (recommendation 84). The Special Rapporteur is seriously concerned because the claim by the Government of the Democratic People's Republic of Korea that the recommendations were already implemented or currently being implemented contrasts starkly with the findings documented by the commission of inquiry and the information received by the Special Rapporteur.

37. At its second periodic review, the delegation of the Democratic People's Republic of Korea asserted that political prison camps did not exist and were a "complete fabrication"; furthermore, persons sentenced to the penalty of reform through labour under the country's Criminal Law served their terms in reform institutions.[24] On a number of freedoms widely documented as being seriously curtailed, the Government claimed that the Constitution of the Democratic People's Republic of Korea also guaranteed freedom of religion, and that the State respected religious life and ceremonies of religious people and ensured the freedom to set up churches and other religious buildings.[25] Freedom to travel was fully guaranteed by both the Constitution and the law; persons in the country could travel abroad after complying with the necessary formalities. People were furthermore free to travel anywhere within the country, "with the exception of the frontlines and areas with military installations where one can travel after obtaining permission",[26] while freedom of expression was "a fundamental human right protected by law". The people in the country were able to freely express their views through radios, newspapers and magazines; any violation of these rights was subject to legal punishment.[27]

38. The above responses given by the Government reflect total denial of the actual situation; similarly, its blatant denial of the systematic human rights violations and the

[23] A/HRC/13/47, para. 74 (c).
[24] A/HRC/27/10, para. 60.
[25] Ibid., para. 61.
[26] Ibid., para. 62.
[27] Ibid., para. 63.

numerous cases of international abduction and enforced disappearances,[28] as documented by the commission of inquiry in its report, is totally unacceptable. If accepted at face value, this conduct, despite the consistent and credible evidence gathered also by other mechanisms of the Human Rights Council itself, could seriously undermine the whole universal periodic review process with the Democratic People's Republic of Korea, running counter to the principles that the review be a cooperative mechanism, based on objective and reliable information and on dialogue, thus undermining its objective of improving the situation of human rights on the ground. This should also be food for thought for those Member States that did not support the commission of inquiry or Human Rights Council resolution 25/25 by arguing that the universal periodic review mechanism rather than a country-specific initiative would be preferable to address the situation.

V. The way forward: the responses required of all parties concerned

39. **In its resolution 25/25, the Human Rights Council called upon all parties concerned, including United Nations bodies, to consider implementation of the recommendations made by the commission of inquiry in its report in order to address the dire human rights situation in the Democratic People's Republic of Korea. The Special Rapporteur interprets "all parties concerned" as all-encompassing; this includes Member States, the United Nations system and its relevant bodies, neighbouring States and other States concerned, relevant international, regional and national bodies, civil society, individuals, the international community as a whole, and possibly other stakeholders.**

40. **Unlike in the previous two years, when the Human Rights Council adopted its annual resolution on the situation of human rights in the Democratic People's Republic of Korea (resolution 19/13 in 2012 and resolution 22/13 in 2013) without a vote, resolution 25/25 was adopted by a vote, requested by Cuba; the result was 30 votes in favour (Argentina, Austria, Benin, Botswana, Brazil, Burkina Faso, Chile, Costa Rica, Côte d'Ivoire, Czech Republic, Estonia, France, Germany, Ireland, Italy, Japan, Kazakhstan, Maldives, Mexico, Montenegro, Morocco, Peru, Philippines, Republic of Korea, Romania, Sierra Leone, the former Yugoslav Republic of Macedonia, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States of America), 6 against (China, Cuba, Pakistan, Russian Federation, Venezuela (Bolivarian Republic of), Viet Nam), with 11 abstentions (Algeria, Congo, Ethiopia, Gabon, India, Indonesia, Kenya, Kuwait, Namibia, Saudi Arabia, South Africa). The position of each of the 47 States Members of the Council has been recorded and is a matter of public and historical record. The Special Rapporteur observes that both during the interactive dialogue with the commission of inquiry and when the resolution was adopted on 28 March 2014, none, with the exception of the Democratic People's Republic of Korea, denied that the dire human rights situation had to be addressed. Of the countries that did not join the majority of 30 members voting in favour of the resolution, most – if not all – cited procedural reasons or differences in approach. They reiterated their reservations about country-specific mandates, and expressed preference for other mechanisms, in particular the universal periodic review, and urged engagement, dialogue and cooperation. The Special Rapporteur stresses that different mechanisms exist for good reasons, and that they are not mutually exclusive. Indeed, ultimately they serve and share the common goal to better promote and protect human rights for all.**

[28] Ibid., paras. 122 and 119.

A. Genuine results to ease suffering on the ground

41. **The Special Rapporteur urges all concerned parties, and in particular the Member States that support the universal periodic review, to seize the opportunity provided by the 81 recommendations that the Democratic People's Republic of Korea accepted voluntarily at its first review. In the face of the systematic, widespread and gross human rights violations documented by the commission of inquiry, no responsible member of the international community should be allowed to hide behind a procedural difference and idly stand by. It is therefore important to show that the universal periodic review process can yield result, not just on paper but in action. Many of the recommendations made at the second review overlap or build upon the 81 recommendations accepted by the State under review. In the time remaining before the twenty-seventh session of Human Rights Council, the Special Rapporteur calls upon all Member States to engage with the Democratic People's Republic of Korea to accept and agree on concrete steps for implementation.**

42. **In the above context, the Special Rapporteur draws special attention to the immediate steps that the Human Rights Council, in its resolution 25/25, urged the Government of the Democratic People's Republic of Korea to take:**

(a) To ensure the right to freedom of thought, conscience and religion, as well as the rights to freedom of opinion, expression and association, including by permitting the establishment of independent newspapers and other media;

(b) To end discrimination against citizens, including State-sponsored discrimination based on the *songbun* system, and to take immediate steps to ensure gender equality and to protect women from gender-based violence;

(c) To ensure the right to freedom of movement, including the freedom to choose one's place of residence and employment;

(d) To promote equal access to food, including through full transparency regarding the provision of humanitarian assistance, so that such assistance is genuinely provided to vulnerable persons;

(e) To immediately halt all human right violations relating to prison camps, including the practice of forced labour, to dismantle all political prison camps and release all political prisoners, and to ensure that justice sector reforms provide protections for a fair trial and due process;

(f) To allow all persons who have been abducted or otherwise forcibly disappeared, as well as their descendants, to return immediately to their countries of origin.

43. **Most of the above steps are similar to the substance of the universal periodic review recommendations acceptance by the State under review. The Government may choose to call those detained as reformed "through labour", serving their terms in "reform institutions",[29] and deny the existence of political prison camps. Names aside, the same principles apply. The Government, through the universal periodic review mechanism, accepted to give all in detention a fair trial and to treat all persons deprived of their liberty with humanity and with respect for the inherent dignity of the human being. There is no reason why the Government should not be asked to demonstrate that it meant what it said. The Special Rapporteur encourages Member States to follow up the recommendation made by the commission of inquiry to form a human rights contact group to raise concerns about the situation of human rights in**

[29] Ibid., para. 60.

the Democratic People's Republic of Korea and to provide support for initiatives to improve it, fully utilizing all available mechanisms to achieve tangible results.

B. Key elements of a strategy to address international abductions and enforced disappearances

44. The Special Rapporteur would like to share a few observations and suggestions about the way forward with the neighbouring States and other States concerned, firstly on the issue of international abductions and enforced disappearances. The commission of inquiry recommended that the Special Rapporteur develop a strategy, involving all concerned United Nations human rights mechanisms, to address the issue of international abduction, enforced disappearances and related matters coherently and without delay. It also recommended that Member States afford full cooperation to ensure the implementation of such a strategy. The Special Rapporteur stresses that this issue, and the strategy being developed, is of upmost importance and will always be an integral part of the follow-up work in the way forward. The gravity of the commission's findings and the clarity it has given to the issue of international abductions and enforced disappearances have energized all concerned as a strategy is being developed to address this important issue.

45. The commission of inquiry found that, since 1950, the Democratic People's Republic of Korea has engaged in the systematic abduction, denial of repatriation and subsequent enforced disappearance of persons from other countries on a large scale and as a matter of State policy. Well over 200,000 persons, including children, have been taken from other countries to the Democratic People's Republic of Korea, and many were never heard of again. This figure includes those who left for the Democratic People's Republic of Korea in the context of the Korean War.[30] They may have potentially become victims of enforced disappearance.

46. During his visit to Japan from 8 to 10 April 2014, as an immediate follow-up to the work of the commission of inquiry, the Special Rapporteur was informed by the authorities that, in addition to the 19 Japanese persons who had been confirmed victims of abduction by the Democratic People's Republic of Korea, there were currently 860 missing persons who could not be ruled out as have been abducted by the Democratic People's Republic of Korea. In addition to holding discussions with the Minister for Foreign Affairs, the Minister for Abduction Issues and other relevant authorities, for the first time in his visit as the mandate holder, the families of victims of abduction and a wide range of civil society actors met with him together to share information and discuss the way forward. The Special Rapporteur was deeply encouraged by the sense of unity and commitment to seeking closure to this issue.

1. An international approach

47. One of the key elements of the strategy developed by the Special Rapporteur is the international perspective and approach required to address the issue of international abductions and enforced disappearances. This is no longer only a bilateral issue between Japan and the Democratic People's Republic of Korea, but one that concerns other countries and the international community at large.

48. The commission of inquiry found that the Democratic People's Republic of Korea had used its land, naval and intelligence forces to conduct abductions and arrests. Operations were approved at the level of the Supreme Leader. The vast

[30] Report of the detailed findings of the commission of inquiry (see footnote 5), para. 1011.

majority of victims were forcibly disappeared to gain labour and other skills for the State. Some victims were used to further espionage and terrorist activities. Women abducted from Europe, the Middle East and Asia were subjected to forced marriages with men from other countries to prevent liaisons on their part with ethnic Korean women that could result in interracial children. Some of the abducted women had also been subject to sexual exploitation.[31] Furthermore, ethnic Koreans from the Republic of Korea and Japan, forcibly disappeared by the Democratic People's Republic of Korea, had been discriminated against for their origins and background, categorized as "hostile" and forced to work in mines and farms in remote marginalized areas of the country.[32] Since the 1990s, agents of the State had abducted a number of persons from Chinese territory, including nationals of China, the Republic of Korea and, in at least one case, a former Japanese national.[33] In addition to victims from China, Japan and the Republic of Korea, nationals of Lebanon, Thailand, Malaysia, Singapore and Romania, and possibly others,[34] were among the cases of international abduction and enforced disappearances recorded by the commission.[35] The Special Rapporteur will be contacting these States to seek further information and to engage them in follow-up actions on behalf of their missing citizens.

2. Engagement of civil society and contact with local communities

49. If the new strategy currently being developed is to succeed in addressing the issue of international abductions and enforced disappearances, the international community must work together. All Governments concerned, families, civil society and relevant United Nations mechanisms should engage strategically in this new phase of work. In addition, the strategy must also involve the general public, in particular in the countries concerned, so that communities in different locations may be informed and hence empowered to share available information with the international mechanisms. The Special Rapporteur is pleased to note that Human Rights Council, in its resolution 25/25, specifically requested sustained communications, advocacy and outreach initiatives to maintain visibility of the situation of human rights in the Democratic People's Republic of Korea. He plans to use this new communications capacity as he pursues a strategy, involving all concerned United Nations human rights mechanisms, to address the issue of international abduction, enforced disappearances and related matters coherently and without delay. He stresses that, in addition to the official languages of the United Nations, outreach should be conducted in relevant languages, in particular Korean and Japanese, so that the general public in the countries concerned may be effectively reached, and results achieved.

3. Closure and accountability

50. The Special Rapporteur is seriously concerned at the continued denial by the Democratic People's Republic of Korea, during its second universal periodic review, of the scale of the issue of international abduction and enforced disappearances, as well as the need to bring closure and ensure accountability, claiming that no citizens of any countries other than Japan had been abducted. The delegation added that the issue had been completely resolved as a result of the efforts made by the Democratic

[31] A/HRC/25/63, para. 67.

[32] Ibid., para. 69.

[33] Ibid., para. 72.

[34] The commission of inquiry considered it possible that other foreigners, especially foreign women, from France, Italy, the Netherlands and other unspecified European countries and the Middle East were among the abductees; see the report of the detailed findings of the commission of inquiry (see footnote 5), para. 975.

[35] Ibid., paras. 966-969, 971-972 and 995.

People's Republic of Korea "in faithful compliance with the DPRK-Japan Pyongyang Declaration published in September 2002",[36] and that the issue of prisoners of war had been settled in accordance with the Armistice Agreement, while the issue of the "abduction of south Koreans" did not exist.[37] Such blatant denial of the facts in the face of the systematic violations and numerous cases documented by the commission of inquiry cannot be left unchallenged. The Special Rapporteur stresses the gravity of the commission's findings and the clarity that it has given to the issue of international abductions and enforced disappearances have energized all concerned to work together, bring closure to victims' families and loved ones, and ensure accountability.

C. Neighbouring States and other States concerned

51. On the issue of refoulement, the commission of inquiry recommended that China and other States should respect the principle of non-refoulement and, accordingly, abstain from forcibly repatriating any persons to the Democratic People's Republic of Korea.[38] The Special Rapporteur reiterates his call upon all countries where persons from the Democratic People's Republic of Korea have sought refuge or are transiting to protect such persons, to treat them humanely and to adhere to the principle of non-refoulement.

52. With regard to the role of China and the possible ways forward, the Special Rapporteur draws attention to a number of pertinent issues and observes that China is in a challenging and an unenviable situation. Most of the nationals of the Democratic People's Republic of Korea who manage to flee the country cross the border with China, and will continue to do so. The current handling of the movement of people across the borders is far from ideal, can easily lead to abuses and is not at all sustainable. The Special Rapporteur makes himself available to engage in a constructive dialogue with China to help find a way forward. The current situation harms all concerned, including the people of China, and must not continue. In addition, many women are trafficked by force or deception from the Democratic People's Republic of Korea into China for the purposes of exploitation. The commission of inquiry found that an estimated 20,000 children born to women from the Democratic People's Republic of Korea were currently in China, without proper access to education, and health care, and nationality and birth registration.[39] The Special Rapporteur remains deeply disturbed by the widespread practice of infanticide and the murder of half-Chinese children in the Democratic People's Republic of Korea, as revealed by the investigation conducted by the commission of inquiry,[40] corroborated by several witnesses as well as in the latest universal periodic review documentation concerning the treatment of minorities in the Democratic People's Republic of Korea.[41] This, too, must be stopped.

53. The Special Rapporteur points out that the cooperation of China is a key factor in bringing meaningful change to the situation of human rights in the Democratic People's Republic of Korea. This applies to the people-to-people and other forms of contact and information flow above and beyond those at the official level. Strengthened market forces and advances in information technology have, for

[36] A/HRC/27/10, para. 119.
[37] Ibid., para. 95.
[38] A/HRC/25/63, para. 90 (a).
[39] Ibid., para. 44.
[40] Ibid., para. 90 (f); see also the report of the detailed findings of the commission of inquiry (see footnote 5), paras. 424-435.
[41] A/HRC/WG.6/19/PRK/3.

example, allowed citizens of the Democratic People's Republic of Korea greater access to information from outside the country. Outside information, notably from and through China, is increasingly finding its way into the country. The Special Rapporteur values the cooperation of China and is determined to assist it in addressing the consequences of the dire situation of human rights in the Democratic People's Republic of Korea.

54. The Special Rapporteur was able to gain an insight into the issues and factors that have an impact on inter-Korean relations during his fact-finding mission to the Republic of Korea in November 2011.[42] Such issues can affect a wide range of human rights, such as the reunification of the thousands of separated families on the Korean peninsula. He encourages the two Governments to disconnect the issue of family reunions from any political or other consideration, such as the provision of humanitarian aid. The reunions must be regular, frequent and inclusive, and become part of a sustained process moving beyond short-term meetings to life-long reunification. During his visit, the Special Rapporteur was informed by relevant authorities that an interministerial structure had been set up to coordinate and handle various aspects of issues relating to refugees from the Democratic People's Republic of Korea. This is a welcome move, given that those seeking to leave the country are at risk of trafficking and exploitation, while many may also have long-term rehabilitation needs and whose full integration into society upon their arrival in the Republic of Korea should be facilitated.[43]

55. As the international community and all parties concerned embark on this new phase of work for human rights in the Democratic People's Republic of Korea, the Special Rapporteur encourages the various political parties in the Republic of Korea to make a concerted effort to provide the much-needed focus, energy and sense of direction for the Korean people to foster dialogue and shape the future of inter-Korea relations on the basis of justice and reconciliation through respect for human rights, while in the meantime helping to ease the ongoing suffering of the people of the Democratic People's Republic of Korea.

D. United Nations system

56. The commission of inquiry pointed out the fact that the Democratic People's Republic of Korea, a State Member of the United Nations, had for decades pursued policies involving crimes that shock the conscience of humanity raised questions about the inadequacy of the response of the international community.[44] The commission therefore made a number of recommendations addressed to the international community and the United Nations.

57. The Security Council has a key role in ensuring accountability of those responsible for crimes against humanity committed in the Democratic People's Republic of Korea and the victims aboard. The three members of the commission of inquiry, at the invitation of Australia, France and the United States of America, briefed the members of the Security Council under the Arria formula on 17 April

[42] See "DPRK: UN expert calls for justice and reconciliation through respect for human rights", 15 November 2013, available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13993&LangID=E.

[43] According to the Ministry of Unification of the Republic of Korea, a total of 1,514 individuals from the Democratic People's Republic of Korea arrived in the Republic of Korea in 2013. In the first three months of 2014, the number of arrivals was 361.

[44] A/HRC/25/63, para. 86.

2014. Of the 13 members present,[45] the 11 members who spoke all suggested, to various degrees, that the situation of human rights in the Democratic People's Republic of Korea be formally incorporated into the Council's agenda. Several also called for regular briefings on the situation by the United Nations High Commissioner for Human Rights and the Special Rapporteur. Six of the 11 members explicitly called for a referral of the situation in the Democratic People's Republic of Korea to the International Criminal Court for action in accordance with that court's jurisdiction, as recommended by the commission of inquiry.[46] The other five indicated that it was incumbent upon the Security Council to consider the matter and referral to the International Criminal Court. The report of the commission has been circulated as a Security Council document (S/2014/276).

58. The Human Rights Council, in its resolution 25/25, recommended that the General Assembly submit the report of the commission of inquiry to the Security Council for its consideration and appropriate action in order that those responsible for human rights violations, including those that may amount to crimes against humanity, were held to account, including through consideration of referral of the situation in the Democratic People's Republic of Korea to the appropriate international criminal justice mechanism, and consideration of the scope for effective targeted sanctions against those who appear to be most responsible for crimes against humanity, taking into account the relevant conclusions and recommendations of the commission of inquiry. The commission briefed and discussed its findings and recommendations at a side event to the sixty-eighth session of the General Assembly on 16 April 2014. In the past two years, the Assembly has adopted its annual resolution on the situation of human rights in the Democratic People's Republic of Korea without a vote. In its resolution 68/183, the Assembly requested the Special Rapporteur to continue to report his findings and recommendations, as well as to report on the outcome of and follow-up to the work of the commission of inquiry, in line with any decisions of the Human Rights Council at its twenty-fifth session. The Special Rapporteur will further update the Assembly in his report to be submitted to the Assembly later in 2014. In the light of the grave findings and recommendations of the commission of inquiry, the Assembly should, possibly in its relevant resolution on the State at its next session, send an unequivocal signal that the international community is prepared to take the follow-up to the work of the commission and Human Rights Council resolution 25/25 to a new level.

59. In its resolution 68/183, the General Assembly requested the Secretary-General to submit a comprehensive report on the situation the Democratic People's Republic of Korea. The Human Rights Council, in its resolution 25/25, requested the Office of the High Commissioner to report on its follow-up efforts in the regular annual report of the Secretary-General to the General Assembly on the situation of human rights in the Democratic People's Republic of Korea, effective as of the sixty-ninth session of the Assembly.

60. In the light of the above, the commission of inquiry, in its report, recommended that the United Nations Secretariat and agencies should urgently adopt and implement a common "Rights up Front" strategy to ensure that all engagement with the Democratic People's Republic of Korea effectively takes into account, and addresses, human rights concerns.[47] The Special Rapporteur is encouraged that, in his meeting with the three members of the commission in April 2014, the Secretary-General expressed his commitment to follow up on the commission's

[45] China and the Russian Federation did not take part.

[46] A/HRC/25/63, para. 94 (a).

[47] Ibid., para. 94 (g).

recommendations and to support to a United Nations system-wide "Rights up Front" response to the situation of human rights in the Democratic People's Republic of Korea. In this context, the Special Rapporteur is fully cognizant of the important humanitarian work that the United Nations and other entities are doing in the country. He draws attention to the commission's recommendations, and indeed that of the Special Rapporteur throughout his work, that States should not use the provision of food and other essential humanitarian assistance to impose economic or political pressure on the State. Humanitarian assistance should be provided in accordance with humanitarian and human rights principles, including the principle of non-discrimination. Aid should only be curbed to the extent that unimpeded international humanitarian access and related monitoring is not adequately guaranteed.[48] The Special Rapporteur hopes that all parts of the United Nations system will rise to the challenge and work and deliver in a coordinated and unified manner, as envisaged in the Secretary-General's "Rights up Front" initiative in response to the commission's report.

61. In its resolution 25/25, the Human Rights Council specifically requested the Office of the High Commissioner to follow up urgently on the recommendations made by the commission of inquiry in its report, and to provide the Special Rapporteur with increased support, including through the establishment of a field-based structure to strengthen monitoring and documentation of the situation of human rights in the Democratic People's Republic of Korea, to ensure accountability, to enhance engagement and capacity-building with the Governments of all States concerned, civil society and other stakeholders, and to maintain visibility of the situation of human rights in the Democratic People's Republic of Korea, including through sustained communications, advocacy and outreach initiatives. The Special Rapporteur stresses that the implementation of that recommendation requires the proactive engagement of all parties concerned with the utmost urgency. In order for the field-based structure to be effective, it has to build on the achievements of the commission of inquiry. The Special Rapporteur considers it important for the structure to be as near as possible to the main source of information, and its impact also partly depends on whether its presence in the region is felt. It must also be able to function with the same independence and objectivity as the commission, in accordance with the principles of the United Nations. Given the persistent denial of access to the Democratic People's Republic of Korea, it is not realistic to establish a field-based structure in Pyongyang. All things considered, it was the commission's view that the Republic of Korea would be the optimal location for the field structure. The Special Rapporteur welcomes that the acceptance by the Republic of Korea to host the structure.[49] He hopes that the structure will be soon operational and trusts that its staff will be able to function in full accordance with the principles of the United Nations and with unimpeded access to witnesses, in order to ensure the continuation of monitoring and documentation of evidence.

[48] Ibid., para. 94 (i).

[49] See the OHCHR press briefing at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14653&LangID=E.

62. **Lastly, the Special Rapporteur pays tribute to the incessant work of civil society, which has played a decisive role in bringing the human rights agenda of the situation in the Democratic People's Republic of Korea as far as it has come today. In this new phase of work, the Special Rapporteur encourages civil society actors, regardless of their location, ideology, focus or approach to the way forward, to work together.**

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Human rights situations that require the Council's attention

Report of the Special Rapporteur on the situation of human rights in Belarus

Summary

The present report is submitted by the Special Rapporteur on the situation of human rights in Belarus to the Human Rights Council in accordance with its resolution (A/HRC/RES/23/15). In the report, the Special Rapporteur sets forth the developments in human rights since his report presented to the Council at its twenty-third session (A/HRC/23/52). The Special Rapporteur outlines major concerns in detail as well as regarding the general situation, which is characterized by a systemic denial of human rights to citizens by way of a purposeful combination of restrictive laws and abusive practices. Recommendations are provided as to how to improve the situation, both step-by-step and in a comprehensive manner.

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I. Introduction

1. The mandate of the Special Rapporteur on the situation of human rights in Belarus was established by the Human Rights Council in its resolution 20/13. Miklós Haraszti assumed his functions on 1 November 2012, and his mandate was extended for one year (A/HRC/RES/23/15). In the present report, the Special Rapporteur describes the prevailing situation of human rights in Belarus since he presented his first report (A/HRC/23/52) to the twenty-third session of the Human Rights Council in June 2013.

2. The general situation of human rights in Belarus has not improved. The widespread disrespect for human rights that has evolved since 1991 into a regime of violations with a structural and endemic character (A/HRC/20/8) remains intact. The Special Rapporteur is concerned about the lack of progress made to improve legislation, institutions and practice, which the United Nations High Commissioner for Human Rights and the Special Rapporteur identified as being at the core of the both systematic and systemic denial of human rights (A/HRC/23/52). In his previous report, the Special Rapporteur had noted some welcome preparatory steps regarding the establishment of a national human rights institution and a parliamentary working group on the death penalty, work in the area of human trafficking and efforts to achieve the Millennium Development Goals. While work does continue in the two latter areas, no progress has been made in the creation of institutions that protect human rights.

3. The country remains the only State in Europe with a Parliament without opposition (A/68/276, para. 14). The judiciary continues to be fully dependent on the President, who names and can remove all judges and the Prosecutor-General. The lack of independence of the courts and law enforcement agencies remain coupled with intimidation against lawyers, who are forced to join the bar association that is directly supervised by the Government.

4. Capital punishment continues to be used in Belarus with no guarantee of due process. Since June 2013, the court of Belarus has sentenced four people to death. Reportedly, no executions have been carried out.

5. Due to new cases, the overall number of persons incarcerated in retaliation for their political activities has practically not diminished. Among them, a former presidential candidate and leaders of major human rights and youth organizations remain behind bars. A few political prisoners were released, but only upon completion of their prison terms, with no effort to review their cases. Despite frequent behind-the-door and public requests by international organizations and various Governments, the President has not used his power to issue an amnesty, which he can do even in the absence of a request for pardon. This strict position towards incarcerated public figures seems to reflect a determination to maintain tight restrictions on public life.

6. The economy is 70–80 per cent State-controlled, which leads to the widespread denial of labour rights with a severe suppression of the right of independent labour unions to organize.

7. The rights to freedom of opinion and expression, association, peaceful assembly and cultural rights continue to be severely restricted in law and practice, as a means to control all spheres of public life. The broadcasting system is State-owned, making media freedom impossible.

8. A highly dissuasive, permission-based regime is still the main tool to deny civil rights. It is particularly applied to limit access to information and the freedoms of expression and opinion, information, association and peaceful assembly – all key for full and inclusive participation in public life.

9. The obligation to obtain permission for any public activity is exacerbated by a practical impossibility to gain such permission for unwelcome publications, gatherings, events or associations. Procedures that regulate how to obtain permission in these areas are cumbersome, costly and time-consuming, lack transparency and deliberately allow for arbitrary outcomes.

10. The permission-based regime is further aggravated by the criminalization of all unsanctioned public undertakings. Those who organize or merely attend such events without prior permission can find themselves facing criminal or administrative charges, and may then face discrimination in various aspects of their lives.

11. Administrative arrests and short-term detention continue to be used systematically and arbitrarily in reprisal against citizens who seek to exercise independently and freely their rights to freedom of expression, association and peaceful assembly. Consequently, civil society is either muzzled or forced to operate clandestinely.

12. The unwillingness of the Government to address chronic human rights concerns and the absolute impunity for human rights violations contribute to their perpetuation. The Special Rapporteur has underlined the systemic and systematic nature of human rights violations in Belarus (A/HRC/23/52, para. 34). So has the United Nations High Commissioner for Human Rights, stating that "deficiencies pertaining to human rights in Belarus are of a systemic nature. They need to be addressed by the authorities through a comprehensive approach, which would include a review of the legislation, policies, strategies and practice pertaining to human rights" (A/HRC/20/8, para. 74).

13. It is the persistent, systemic and systematic character of the repression of all human rights in Belarus that the Human Rights Council should bear in mind. The chronic restriction of all human rights has led to recurrence of violence over the last 15 years, typically at times of elections and the announcement of their preordained outcomes, as illustrated in the crackdown on the demonstrations following the 2010 December presidential elections (A/68/276, para. 16).

14. It is critical that the Human Rights Council maintain its scrutiny of the serious human rights situation in Belarus. The regrettable lack of governmental cooperation on the mandate underlines the need to report on and monitor the human rights situation in Belarus.

15. The Special Rapporteur pays great attention to the protection and promotion of all human rights in the country, including economic, social and cultural rights. This report documents several serious concerns in these areas. Nevertheless, it is challenging to find non-governmental information on the proclaimed successes in the sphere of economic and social rights, and therefore hard to evaluate the enjoyment of these rights. If the Special Rapporteur were authorized to visit the country, he would be able to develop independent findings, including through a dialogue with the Government and other stakeholders, and, on this basis, directly assess the situation, including achievements regarding economic, social and cultural rights.

II. Methodology

16. Independence, impartiality and objectivity, and cooperation with all stakeholders are the guiding principles for the Special Rapporteur's work.

17. The refusal so far of the Government of Belarus to recognize the Special Rapporteur's mandate means that he continues to have no access to the country.

18. Nevertheless, the Special Rapporteur has continued to seek the cooperation of the Government in order to engage in a constructive dialogue. He thus submitted requests to the

Minister of Foreign Affairs and the Permanent Representative of the Republic of Belarus to the United Nations Office at Geneva for meetings and for an official visit to the country. The Special Rapporteur has received no response to any such correspondence, and again deplores that this situation limits the collection and analysis of first-hand information from in-country sources, including from the Government.

19. Notwithstanding such constraints, the Special Rapporteur has endeavoured to collect information from primary sources, which is crucial for the development of a report that is as accurate, time-bound and measured as possible. He has frequently undertaken consultationswith representatives of civil society.

20. The Special Rapporteur is grateful for the cooperation he enjoys with many stakeholders living in Belarus. The Special Rapporteur collaborated with several special procedures mandate holders to transmit two allegation letters to the Government of Belarus and issue press releases on human rights concerns. The present report refers to cases that are emblematic of the nature of the human rights violations in Belarus. They do not, however, reflect the full list of allegations submitted to the Special Rapporteur.

III. Rule of law

21. As previously reported, presidential decrees are used as the main, and in fact, supreme legislative mechanism in Belarus (A/HRC/23/52, para. 37). While Parliament is responsible for developing and adopting legislation, it is the Presidential Administration that prepares the drafts, and the President's decrees can overrule existing legislation, including constitutional law, on any issue. An example is Presidential Decree No. 6 of 29 November 2013 on improvement of the judicial system, which overhauled the court system.[1]

22. The introduction of new or revised legislation or adoption of amendments is never the result of a consultative process and systematically excludes civil society, despite frequent requests from civil society. Examples include the 2013 amendments to the law on public associations and the Electoral Code.[2]

National legislation

23. Some new pieces of legislation have been developed or adopted recently. While some may introduce improvements, there still remains concern that legislation adopted allows for an interpretation restricting rights.

24. Amendments to the law on activities of political parties and other public associations were adopted on 2 October 2013 and signed by the President on 4 November; they came into force on 20 February 2014. On 16 July 2013, a petition signed by 25 non-governmental organizations (NGOs) to hold special parliamentary hearings on improving these amendments was sent to Parliament. As this was refused, NGOs held their own discussion on 9 October 2013.[3] They assess that, overall, the new legislation does not resolve the complicated and cumbersome registration process, the criminal liability for activities of unregistered public associations and foundations and the restrictions on receiving in-country and foreign funding.

[1] http://www.obisud.vbreste.by/2012-01-26-13-41-32/80-s-29-2013-n-6-.

[2] Belarusian Telegraph Agency, "Amendments to Belarus' electoral law passed in first reading", 2 October 2013 (http://news.belta.by/en/news/politics?id=728196).

[3] http://lawtrend.org/ru/data/1221/.

25. Draft legislation on alternative civil service was introduced in Parliament on 6 February 2014, based on a request by the Constitutional Court from 2000.[4] The draft has remained under "restricted use only", with no public information on its content.

26. The Law on Population Register (2008) came into force in July 2013.[5] It establishes 49 categories of primary and additional personal data stored in the register. The legislation only protects data registered by authorized agencies. Data registered by other entities is not safeguarded by guarantees.

27. Amendments to the law on information, information technologies and protection of information were adopted in January 2014.[6] While containing legal provisions on personal data, they do not sufficiently and effectively protect it. Requests to hold public consultations involving all stakeholders and civil society met with little response.[7]

28. The law on fundamentals of crime prevention with a definition of domestic violence was adopted on 4 January 2014.[8] Protective orders are to be issued against individuals convicted of domestic violence.

IV. Engagement with the international human rights system

29. Over the years, various international human rights mechanisms – treaty bodies, special procedures and the Universal Periodic Review – have made recommendations to bring legislation, policies and practice into line with the commitments of Belarus under international human rights law. Implementation of these recommendations remains very limited.

30. On 29 November 2013, the Committee on Economic, Social and Cultural Rights requested Belarus to revise the system of short-term labour contracts, abolish forced labour of those with drug and alcohol addiction and ensure the free exercise of rights of trade unions, as well as to guarantee social protection mechanisms.

31. Belarus has continued to challenge on procedural grounds the registration of cases filed under the Optional Protocol to the International Covenant on Civil and Political Rights. To date, the Human Rights Committee has not been satisfied by the measures taken by the State party to give effect to its recommendations.

32. Belarus is midway to its second-cycle Universal Periodic Review, scheduled for 2015. It submitted a mid-term progress report in 2012. On 26 March 2014, the Ministry for Foreign Affairs and the United Nations country team held a workshop in Minsk on implementing the recommendations of the first Universal Periodic Review.

[4] Decision No D-98/2000 of 26 May 2000 on some issues of realization of Article 57 of the Constitution of the Republic of Belarus (http://www.kc.gov.by/en/main.aspx?guid=5143).

[5] http://www.pravo.by/main.aspx?guid=3871&p0=H10800418.

[6] http://www.pravo.by/main.aspx?guid=3871&p0=h10800455&p2={NRPA}.

[7] Organization for Security and Co-operation in Europe, "OSCE media freedom representative presents analysis of Belarusian information law and recommends improvements", 10 September 2013 (http://www.osce.org/fom/104711).

[8] http://pravo.by/main.aspx?guid=3871&p0=H11400122&p1=1.

V. Human rights concerns

A. Independence of the judiciary

33. In November 2013, Presidential Decree No. 6 on improving the judicial system of the Republic of Belarus was adopted. This saw some positive institutional developments: the merger of the Supreme Court and the Supreme Economic Court, with the functions of the latter transferred from the Ministry of Justice to the former, the abolishment of military courts and the removal of all district courts from the jurisdiction of the Department of Justice to that of regional courts. It is still too early to assess the impact of the Decree. It is hoped that it will bring some independence to the judiciary from the executive, and a more consistent interpretation and application of the law. However, the President remains directly responsible for appointing, dismissing and determining the tenure of judges.

34. In cases where the authorities are found to be responsible for a human rights violation, practice shows that courts rarely award non-pecuniary compensation for damages. Although the obligation to prove the legality of the action lies with the authorities against which the claim was filed,[9] court decisions often argue that it is the applicant who must prove that the authorities acted unlawfully.

35. Of particular note is that criminal cases retain an accusatory bias, as recognized by the Supreme Court in its reviews.[10] Judicial practice still presumes the credibility of the testimony of a police officer, despite the removal of this provision in 2007 from the amended law on internal affairs agencies.

36. The Special Rapporteur again emphasizes his concern at the lack of independence of the judiciary, which is inconsistent with an environment necessary for the exercise of human rights (E/C.12/1/Add.7/Rev.1, para 12). For many years, the United Nations human rights mechanisms have expressed that procedures relating to the appointment, tenure, disciplining and dismissal of judges do not comply with the principle of independence and impartiality of the judiciary.[11] There also seems to be a failure on the part of the executive to respect the decision of the Constitutional Court and thereby observe the rule of law.[12]

B. Independence of lawyers

37. The United Nations human rights mechanisms have repeatedly called on Belarus to respond to concerns of defence lawyers and address the pattern of intimidation against lawyers and of interference in their work (A/HRC/15/16, paras. 50 and 98.26). The continued failure to address this issue has a chilling effect on the independence of lawyers.[13] Like other Special Procedures mandate holders, the Special Rapporteur is concerned by the frequent targeting of lawyers who work on human rights cases.[14] He

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[9] Constitution of the Republic of Belarus, Article 60 (http://www.belarus.net/costitut/constitution_e.htm#Article%2060).

[10] http://court.by/justice_RB/ik/obzor/2010/e439740565c86a62.html.

[11] CCPR/C/79/Add.86, para. 13; E/C.12/BLR/CO/4-6, para. 6; CAT/C/BLR/CO/4, para. 12; E/CN.4/2001/65/Add.1, paras 106–114; E/CN.4/2005/6/Add.3, para. 44; E/CN.4/2005/35, paras. 29–31; A/HRC/23/52, para. 61; A/68/276, para. 83.

[12] CCPR/C/79/Add.86, para. 13; E/CN.4/2001/65/Add.1, paras. 29–3; A/HRC/4/16, para. 14.

[13] CAT/C/BLR/CO/4, para. 12(a); A/HRC/17/30/Add.1, para. 101; A/HRC/20/8, para. 75(i); A/HRC/23/52, para. 64; A/68/276, para. 76; A/HRC/25/55/Add.3, para. 61.

[14] E/CN.4/2001/65/Add.1, para. 117; A/68/276, para. 97.

reiterates his call on Belarus to reinstate the licences of lawyers revoked after they represented candidates in the 2010 presidential elections.[15]

38. Domestic legislation, including Presidential Decree No. 12, undermines the independence of the legal profession by subordinating lawyers to the control of the Ministry of Justice and introducing obligatory membership in a State-controlled bar association. The Special Rapporteur calls upon Belarus to take all appropriate measures, including a review of the Constitution and laws, to meet the international minimum standards as set out in the Basic Principles on the Role of Lawyers, which require Governments to ensure that lawyers "are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference" (para. 16), so as to ensure that judges and lawyers are independent of any political or other external pressure.[16]

C. Torture and other cruel, inhuman or degrading treatment or punishment

39. The Special Rapporteur continues to receive reports of torture and ill-treatment of those held in custody, including cases of violence in detention facilities by both prison staff and inmates under the direction of the prison administration. This includes detainees being beaten by special units of the Interior Ministry aimed at maintaining order in correctional institutions; violence towards inmates by KGB agents while in the KGB pretrial facility; physical and psychological abuse by law enforcement agents to induce a prisoner to perform certain actions or take a certain stand in the criminal case under investigation; and a group of prisoners who attempted to force fellow inmates to write a petition for a pardon or try to make them commit suicide.[17]

40. Reports demonstrate that it is virtually impossible for a person in custody to bring a complaint for torture to the prosecutor. Invariably the complaint is not processed by the prison administration and the complainant faces repercussions, such as solitary confinement or other harsh physical and psychological ill-treatment. With no oversight of places of detention, torture and ill-treatment remain unchecked.

41. While article 25 of the Constitution of Belarus prohibits torture and cruel treatment, there is no definition of torture in national legislation. In August 2013, the President submitted a draft law[18] to the House of Representatives that proposed a definition of torture be considered for inclusion as a footnote to article 128 (a) in the "Crimes against humanity" section of the Criminal Code.[19]

42. In August 2013, Minsk resident Ihar Ptichkin[20] died in unknown circumstances while in detention facility No. 1 (SIZO) in Minsk. Although the official cause of death was a heart attack, relatives believe that he died after a brutal beating by prison officials. The

[15] CAT/C/BLR/CO/4, para. 12(c); E/CN.4/2001/65/Add.1, para. 123(c); A/HRC/23/52, para. 119(f); A/HRC/23/52, para. 65.

[16] CCPR/C/79/Add.86, para. 14; A/56/44, paras. 45(g) and 46(d); CAT/C/BLR/CO/4, para 12; E/CN.4/2001/65/Add.1, paras. 116 and 123(b); E/CN.4/2005/6/Add.3, paras 45 and 82(a); E/CN.4/2005/35, paras. 33 and 93; A/HRC/20/8, para. 75(i); A/HRC/23/52, para. 67; A/68/276, para. 118(g).

[17] Human Rights Center "Viasna", *Report on the Results of Monitoring Prison Conditions in Belarus* (Minsk, 2013), p. 14 (https://spring96.org/files/book/en/2013_prison_conditions_en.pdf).

[18] http://pravo.by/main.aspx?guid=3941&p0=2013073001, para. 33.

[19] http://pravo.by/main.aspx?guid=3941&p0=2013073001.

[20] Hartiya, "Ihar Ptichkin was beaten by riot control group", 17 September 2013 (http://charter97.org/en/news/2013/9/17/75797/).

body was exhumed in December 2013, but there are no official results of the investigation.[21]

43. The Special Rapporteur continues to urge the prohibition by law of the use and practice of torture, and for a definition of torture to be adopted in line with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which Belarus has ratified. He calls for prompt, impartial and full investigations into all allegations of torture and ill-treatment, and for the prosecution and punishment of alleged perpetrators.[22] The Committee against Torture has repeatedly made such requests.[23]

D. Prison conditions

44. Some improvements in conditions of detention have been reported by NGOs. As a result of an apparent reduction of the prison population, cells are less cramped and the quality of food has improved. However, reports indicate that detention conditions put prisoners at risk of contracting chronic diseases, as they are cold and damp. This is the case in prisons in Minsk and Baranavichy and punishment cells in the colonies of Navapolatsk and Ivatsevichy.[24]

45. Article 112 of the Criminal Executive Code of Belarus defines disciplinary procedures in detention facilities. However, the interpretation of the legislation and ensuing practice are arbitrary, with reportedly little oversight,[25] despite the existence of public monitoring commissions that operate under the Ministry of Justice[26] comprising representatives of registered NGOs. The latter do undertake visits, which are reported on annually through the Ministry of Justice, yet there remains scepticism from prisoners as to their independence and effectiveness, particularly in dealing with complaints.[27]

46. It is critical to establish a complaints procedure to combat sexual violence in places of detention, in accordance with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, and to ensure that law enforcement personnel are trained on the absolute prohibition of sexual violence.[28]

47. The Special Rapporteur urges for measures to be undertaken that bring conditions of detention into line with the standard minimum rules for the treatment of prisoners and other relevant international and national standards, and that ensure that an independent and functioning complaints mechanism is established.

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[21] Human Rights Center "Viasna", *Situation of Human Rights in Belarus in 2013: Review-Chronicle* (Minsk, 2014), p. 224 (http://spring96.org/files/reviews/en/2013_review_en.pdf).

[22] A/HRC/23/52, paras. 50–55, and CAT/C/BLR/CO/4, para. 11.

[23] CAT/C/BLR/CO/4.

[24] See footnote 17 above, p. 16.

[25] *Ibid.*, p. 32.

[26] Regulation on the Procedure of Control by the Republican and Local Public Associations Over the Bodies and Institutions Executing Punishment and Other Criminal Sanctions, approved by Decree No. 1220, Council of Ministers (15 September 2006) and the Regulations on the Procedure for the Formation and Activities of Public Monitoring Commissions, approved by Decree No. 85, Ministry of Justice of the Republic of Belarus (15 December 2006).

[27] See footnote 17 above, p.11.

[28] CAT/C/BLR/CO/4, paras. 20 and 21(c)–(d).

E. Arbitrary arrest and detention

48. The Special Rapporteur continues to receive reports from journalists, lawyers, human right defenders and members of political organizations who claim they were detained and charged with speculative administrative offences.

49. The Special Rapporteur has collected information on more than 50 cases of people subjected to administrative arrests for participating in unauthorized mass events. Similarly, individuals have been arbitrarily arrested and detained for: collecting signatures outdoors; handing out photos of political prisoners; a film screening about the Slutsk anti-Bolshevik uprising in the village of Kazlovicky; and organizing a bike carnival in Minsk. All of these were viewed by the authorities as unauthorized mass events, with participants charged for disobedience to the lawful demands of police officers, under article 23.34 (violations of the rules on holding mass events) of the Administrative Code.

50. Reports of arbitrary detention of journalists are accounted for under freedom of expression. A typical case of arbitrary detention as a means of intimidation is the arrest of 15 participants of a demonstration in memory of Ihar Ptichkin on 14 September 2013. Among those detained was Andrei Bondarenko, the Director of the NGO Platform Innovation. While in detention, the detainees were given neither legal assistance nor information on their rights. Their relatives received no information on their whereabouts.[29] They were released after nine hours.

51. Preventive detentions and the arrests of youth activists were consistently carried out by law enforcement. LGBT (lesbian, gay, bisexual and transgender) activists are typically summoned to so-called "preventive conversations" during which they are told that the existence of LGBT communities results in increased production of pornography. Maksim Dzimtryieu, Deputy Chairman of the NGO GayBelarus, was forced to have such a "conversation" on 16 August 2013.

52. New cases were reported where individuals were detained and sentenced for participating in an unsanctioned event only after the information on the event had been posted on the Internet. For example, on 30 December 2014, Aliaksandr Ivanou was charged and sentenced under article 23.34 of the Administrative Code by Hrodna District Court to a fine for posting information on the Internet about the campaign "Stop-Tax". Four days earlier, he had reported on Hrodenski Forum about a gathering for motorists on 27 December.[30]

53. A decision to detain a person continues to require sanctioning only by the prosecutor; there is still no provision for a judicial review of merit of the case. While a detainee may appeal to the court against the detention, the court may only check the legality of the procedure, not of the decision itself (A/HRC/23/52, para. 71).

54. The Special Rapporteur again recalls that the authorities of Belarus should ensure that detention may be ordered only by a judge, and that pretrial detention is used only in exceptional circumstances.

[29] International Federation for Human Rights, "Belarus: arrest and sentencing of Mr. Andrei Bondarenko", 15 November 2013 (http://www.fidh.org/en/eastern-europe-central-asia/belarus/14242-belarus-arrest-and-sentencing-of-mr-andrei-bondarenko).

[30] See footnote 21 above, p. 231.

F. Imprisonment of political opponents, human rights defenders and activists

55. In 2013, three political prisoners were released, having served their full sentence – Zmitser Dashkevich,[31] Aliaksandr Frantskevich and Pavel Seviarynets.[32]

56. As of April 2014, 10 prisoners whose sentences appear to have been politically motivated are still imprisoned – Mikalai Au'uhovich, Mikalai Statkevich, Eduard Lobau, Ales Bialiatski, Mikalai Dziakok, Ihar Alinevich, Yauhen Vaskovich, Artsiom Prakapenka, Andrei Haidukou and Vasil Parfiankou.

57. Over the past year, many continued to have limited access to relatives and lawyers, and have faced administrative punishment for alleged violations of the rules of detention. Ales Bialiatski, Head of the Human Rights Center "Viasna", has been denied any long-term visits by his wife. He was sentenced in 2011 on charges of tax evasion (A/HRC/23/52, para. 57), and has served his sentence in Penal Colony No. 2 in Babruisk. Four prisoners, Mikalai Autukhovich, Mikalai Dziadok, Mikalai Statkevich and Yauhen Vaskovich, are serving sentences in isolation under strict prison regimes for alleged violations of the rules of detention.[33] Former 2010 presidential candidate Mikalai Statkevich is serving six years in prison on charges of organizing mass riots, accompanied by "personal violence" and resistance to public agents.[34] He was transferred to Prison No. 4 in Mahiliou, after allegedly violating the rules of detention in Penal Colony No. 17 in Shkou. Such a measure is ordered by the court upon application from the prison administration, approved by the supervisory commission at the local executive and administrative body.

58. Andrei Haidukou, an opposition activist and leader of the Union of Young Intellectuals,[35] was sentenced in November 2013 by the Vitebsk Regional Court to one and a half years' imprisonment for attempting to establish cooperation with the security or intelligence agencies of a foreign State.[36] He is currently held in Penal Colony No. 19 in Mahiliou.

59. Mikalai Autukhovich has been punished for the last two years,[37] with new punishments imposed when older ones expire. On 4 September 2013, one month before the end of one set of punishments, he was again punished for allegedly failing to be in bed on time. He was consequently deprived of receiving parcels and meeting with relatives.

60. Former political prisoners who have been pardoned over the past year still face a preventive supervision procedure,[38] restricting their travel and requiring them to regularly report to the police. None have had their civil and political rights fully restored: they are prohibited from running for or occupying public office and must obey restrictions including a curfew, bans on involvement in demonstrations and a requirement to inform the

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[31] Zmitser Dashkevich was released on 28 August 2013.

[32] Pavel Seviarynets was released on 19 October 2013.

[33] See footnote 21 above, p. 4.

[34] Sentenced on 26 May 2011 under Part 1, article 293 of the Criminal Code of Belarus.

[35] An unregistered organization.

[36] Sentenced on 13 November, 2012 under para. 1, Article 14 and Article 356-1 of the Criminal Code of Belarus; see also footnote 21 above.

[37] Human Rights Center "Viasna", "Prison authorities keep harassing Mikalai Autukhovich", 18 September 2013 (http://spring96.org/en/news/65915).

[38] Article 80 of the Criminal Code (http://etalonline.by/?type=text&regnum=HK9900275#load_text_none_1_).

authorities about any change in their place of residence. Misdemeanours and violations of three of these restrictions within a one-year period may result in a criminal sentence.[39]

61. The President has the power to issue a pardon through a Presidential Decree. He has the prerogative to pardon a person[40] regardless of whether the latter has requested one. However, the President has repeatedly claimed that he cannot grant a pardon in the absence of a petition.[41] In 2008, however, Alexander Kozulin (2006 presidential candidate) was pardoned without a petition. A further example is from August and September 2011, when more than 30 people were pardoned, 12 of whom had not submitted a petition.[42] The arbitrariness of the procedure exists within a broader system lacking the rule of law.

62. The Special Rapporteur once again calls upon the authorities to release immediately and unconditionally all those imprisoned for the exercise of their political and other rights (A/HRC/23/52, para. 119(a)). He calls on the authorities to ensure that the rights of those political prisoners who have been released are immediately and fully rehabilitated.

63. The Special Rapporteur remains alarmed that any person can be arrested and detained at any time in reprisal for disagreement with or criticism of the authorities or for engaging in the promotion of human rights. Such use of criminal law by *desiderata* is arbitrary and violates the basic principles of the rule of law.

G. Enforced disappearances

64. There remains no progress in solving the outstanding cases of enforced disappearances dating back to 1999 and 2000, when Viktar Hanchar, a former member of Parliament and his associate, Anatol Krasouski, as well as Yury Zakharenko, former Minister of the Interior, and Dimitry Zavadsky, an investigative journalist, were abducted. All were noted political opponents of President Lukashenka. Numerous testimonies and accounts collected by the Working Group on Enforced or Involuntary Disappearances and the Human Rights Committee stated that the disappearances, some of which were committed on busy streets, were assisted by actual and former members of the law enforcement agencies. Nevertheless, the authorities merely notify the relatives of the victims every three months that there is "no result" in any of the cases.

65. Relatives and lawyers again expressed their concern to the Special Rapporteur that, owing to the statute of limitations in the Criminal Code, the cases would be officially closed in 2014 and 2015 – that is, 15 years after the four persons disappeared.[43]

66. The Special Rapporteur calls upon the authorities to urgently investigate the fate of the disappeared persons.

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[39] Human Rights Watch, *World Report 2013: Events of 2012* (New York, Seven Stories Press, 2013), p. 406.

[40] http://www.pravo.by/main.aspx?guid=3871&p0=h11200387&p2={NRPA}.

[41] http://naviny.by/rubrics/politic/2012/11/27/ic_news_112_406171.

[42] http://spring96.org/files/reviews/en/2012_review_en.pdf.

[43] A/HRC/23/52, para. 46–49, and E/CN.4/2001/68, paras. 107–108.

H. Death penalty[44]

67. In 2013, courts issued death sentences to four people for murder - Ryhor Yuzepchuk, Pavel Sialiun, Eduard Lykau and Aliaksandr Hrunou. In October, the Supreme Court of Belarus annulled the sentence of Aliaksandr Hrunou, ruling the case should be reinvestigated.[45] Having reconsidered the case, on 24 December 2013, the Homel Regional Court reissued the death penalty. Before the reconsideration of the case,[46] President Lukashenka publicly called on the judiciary for a renewed death sentence for Aliaksandr Hrunou, by stating:

> if you are a scoundrel and a bastard, and it is not the first time you kill someone, then what right do you have to live on this earth? I am not bloodthirsty, but retribution and punishment should be appropriate. Otherwise, we would never put things in order and never lower the temperature in this society. Grave crimes must be punished with maximal severity.[47]

68. Information on death sentences remains limited for relatives and the general public. Since the leaks of Ryhor Yazepchuk having been sentenced to death, it has been difficult to obtain details, including whether he has been executed.

69. Concern remains regarding due process in death penalty cases heard behind closed doors and prejudice towards defendants publicized by the highest level of power..

70. The establishment in December 2012 of a parliamentary working group on the death penalty was viewed by the Special Rapporteur in his 2013 report as a promising development. However, it has yet to yield the expected progress on the issue. In the early months of 2013, Petr Miklashevich, the Chairman of the Constitutional Court, stressed several times that the "question of a moratorium on the death penalty remains open", although not on the agenda in the foreseeable future (A/HRC/23/52, para. 27). One year on, this seems to be the reality.

71. The Special Rapporteur is convinced that leaders should promote the exercise of reason over popular passion regarding criminal justice. An immediate moratorium is critical due to the serious breaches to the right to a fair trial (A/HRC/23/52, para. 42).

I. Freedom of opinion and expression

72. Belarus has no privately-owned nationwide broadcasting channels, with the Government retaining strict guidance and control over the media. Television and radio continue to be controlled by Belteleradiocompany. It owns four of the six nationwide channels,[48] with the additional two owned by other State companies. There are no public service channels.

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[44] Executions are carried out by a gunshot to the back of the head. There is a lack of transparency about persons held on death row, and an inadequate procedure for appeals. Annual statistics on the use of the death penalty are not available, nor are the names of most of those who have been already executed. Those facing the death penalty, and their relatives, are not informed of the scheduled date of execution; following the execution, the relatives are not informed of where the body is buried. (A/HRC/23/52, para. 42).

[45] See footnote 39 above, p. 423.

[46] Human Rights Center "Viasna", "Supreme Court to consider appeal against repeated death sentence for Aliaksandr Hrunou", 20 February 2014 (http://dp.spring96.org/en/news/69257).

[47] http://telegraf.by/2013/11/Lukashenko-vines-prigovor-ubitse-devushki-iz-gomelya.

[48] http://www.tvr.by/eng/about.asp.

73. Belsat, located in Poland, remains the only independent TV channel broadcast in Belarus. It has been refused permission to open an editorial office in Belarus.[49] In 2013, a positive step saw the authorities prolong the accreditation of the editorial office of EURORADIO, which broadcasts in Belarusian from Poland.[50]

74. In early 2014, a State subsidy of nearly 5 million EUR was given to 400 State-owned newspapers.[51] They enjoy exclusive advertising support from the 70 per cent-strong State economy. Privately owned companies are intimidated into following the patterns of State advertising. The supply of printing paper, printing, subscription and distribution systems are all State-guided and systematically discriminate against the independent print press.[52]

75. Article 13 of the law on mass media provides for the obligatory registration of any printed publication with a circulation of more than 299 copies; even publications under 300 copies have to rent offices, pay taxes and employ editors. An editorial board must be registered as a legal entity, and only then can apply to register as a media outlet. As a precondition, it must have separate offices on non-residential premises.[53] Editors of new media outlets must have higher education and at least five years of work experience.[54] These restrictions contradict the guidelines issued by the Human Rights Committee on small-circulation publications.[55]

76. Article 51 of the law on mass media allows for the closure by the Ministry of Information or the Prosecutor-General of any media outlet in case of either a single violation of provisions or the issuance of two or more written warnings in one year.[56] While the number of warnings diminished in 2013, regulations were not case[d].

77. The online media continued to be severely affected by a new trend of applying extrajournalistic regulations to web activities (A/HRC/23/52, para. 79), as well as specific Internet-related restrictions.[57]

78. In 2013, 40 websites were banned in a non-judicial procedure, including the sites of the Human Rights Center "Viasna", Charter'97 and Belarusian Partisan.[58] The website of the Human Rights Center "Viasna" is blacklisted on a decision of the Prosecutor-General, the rationale being that it is an unregistered organization and that "the materials posted on the website do damage to the Republic of Belarus". The Human Rights Center "Viasna" has appealed the decision.

[49] Belsat, "Belsat denied registration yet again", 12 April 2013 (http://belsat.eu/en/aktualnosci/a,13489,belsat-denied-registration-yet-again.html).

[50] EURORADIO, "Belarus extends accreditation for Euroradio bureau", 15 November 2013 (http://euroradio.fm/en/euroradio-correspondent-office-prolongs-accreditation-belarus).

[51] http://pravo.by/main.aspx?guid=3871&p0=H11300095&p1=1&p5=0.

[52] Civic Solidarity, *Belarus: Time for Media Reform: Policy Paper on Media Freedom in Belarus* (2014) (http://civicsolidarity.org/sites/default/files/idx_belarus_eng_webres_final.pdf).

[53] http://mininform.gov.by/_modules/_cfiles/files/Postanovlenie_MI_n_18_ot_07.10.2009.doc.

[54] http://law.by/main.aspx?guid=3871&p0=H10800427e.

[55] *Vladimir Petrovich Laptsevich* v. *Belarus*, Communication No. 780/1997, U.N. Doc. CCPR/C/68/D/780/1997 (2000).

[56] http://law.by/main.aspx?guid=3871&p0=H10900427e.

[57] Index, *Belarus: Pulling the Plug: Policy Paper on Digital Challenges to Freedom of Expression in Belarus* (2013) (http://www.indexoncensorship.org/wp-content/uploads/2013/01/IDX_Belarus_ENG_WebRes.pdf).

[58] http://www.belgie.by/node/216.

79. In 2013, amendments to the law on information and the protection of information[59] introduced changes to the procedure for the State registration of publishing activities. Organizations engaged in publishing activities must be registered with the Ministry of Information (in addition to needing to be licensed for these activities). Several NGOs attempted to provide proposals for the legislative process, but none were taken into account.

80. Journalists continue to face interference in their work. Arbitrary detention of journalists continued in 2013. The Belarusian Association of Journalists reported 45 detentions as of November 2013; 20 of these cases saw journalists detained, with 4 resulting in administrative arrests of between 3 to 15 days.[60]

81. No progress has been reported in the cases of journalists Veranika Charkasava (murdered on 20 October 2004), Vasil Hrodnikau (found dead on 18 October 2005) and Aleh Biabenin (found dead on 3 September 2010).[61] An investigation into the case of Veranika Charkasava has been suspended;[62] details of the official results of the investigations into the deaths of Vasil Hrodnikau and Aleh Biabenin are being challenged by relatives.[63]

82. The Special Rapporteur notes that Belarus has been repeatedly called upon to effectively guarantee the freedom of expression, which is both an international and constitutional obligation of the Government.[64] Deep concerns have been expressed about the Government undermining the independence of print and audiovisual media, its harassment and intimidation of journalists and dissident Internet users, and its denial of access to public broadcasting facilities by political opponents to the Government.[65] Belarus has frequently been called upon to remove all forms of excessive administrative, financial and legal restrictions on the freedom of the media, in order to permit the widest possible dissemination of independent media and suppress all forms of direct and indirect censorship.[66]

J. Access to information

83. In Belarus, there is no legislation that guarantees citizens' right to access Government information of public interest and to protect the privacy of their personal data.[67]

84. Despite the January 2014 amendments on the law on information, information technologies and protection of information, guarantees are still lacking in the protection of

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[59] http://www.pravo.by/main.aspx?guid=3871&p0=h10800455&p2={NRPA}.

[60] Belarusian Association of Journalists, "Mass media in Belarus: e-newsletter", October–December 2013 (http://www.baj.by/sites/default/files/monitoring_pdf/5342013_mass_media_in_belarus_en.pdf).

[61] Belarusian Association of Journalists, "Unsolved cases", 30 December 2011 (http://baj.by/en/scandals).

[62] Belarusian Association of Journalists , "Investigation into Veranika Charkasava cases suspended", 22 October 2013 (http://baj.by/en/node/22632).

[63] Index, "Suspicions over 'suicide' of Belarus activist Aleh Byabenin", 4 September 2010 (http://www.indexoncensorship.org/2010/09/belarus-aleh-byabenin/).

[64] A/HRC/15/16, para 97.39; CAT/C/BLR/CO/4, para. 14(b).

[65] CCPR/C/79/Add.86, para. 17; CAT/C/BLR/CO/4, para. 25; ; E/CN.4/2005/35, paras. 34–42; A/HRC/23/52, paras. 74–81; A/68/276, paras. 42–43; A/HRC/25/55/Add.3, para. 63; A/HRC/20/8, paras. 52–58.

[66] E/CN.4/2005/35, para. 94; A/HRC/20/8, paras. 51 and 75(h).

[67] Access Info Europe/Centre for Law and Democracy, "Global right to information map". Available from http://www.rti-rating.org/.

personal data, as a separate law on access to information and protection of personal data should have been adopted.

85. No legal mechanism is provided for the protection of personal data. All personal data is collected in the Unified Register of Population of Belarus in accordance with the law on population registry, which came into force on 26 July 2013.[68] There is no openness and transparency on the use of this data, and little public oversight.

86. Citizen and media access to data of public interest is hindered by the provisions of the law on State secrets. There is no clear definition of a "State secret". Around 60 entities (including such organizations as the State-owned national broadcaster Belteleradiocompany) can classify a document as "secret information" and mark it accordingly as "confidential". The term "official information" is also used, i.e. any public agency may classify any inside information at their own discretion.[69]

K. Freedom of peaceful assembly

87. The law on mass events in Belarus restricts permissible locations to such an extent that demonstrations in city centres are not possible. The law requires organizers to pay for services and restricts who can organize events (no minors and only citizens). It defines pickets as one-man actions; even these need to obtain a permit. Moreover, it provides for the liquidation of any organization that violates these rules.

88. Most public protests end with arrests and fines, regardless of whether they are sanctioned.[70] Even at sanctioned events, repressive measures have been reportedly used by police. The 2014 Freedom Day March on 25 March (marking the anniversary of the Belarusian Popular Republic of 1919) reportedly saw the largest crowd since the 2011 protests around the 2010 December presidential elections. Maksim Vinyarski of the European Belarusian Movement, one of 12 activists arrested during the annual Freedom Day March, was sentenced to 15 days' administrative arrest for allegedly chanting extremist slogans and using vulgar words.[71]

89. On 12 November 2013, the Human Rights Committee found Belarus to have violated the right to peaceful assembly of Uladzimir Siakerka, Chairman of the Homel regional branch of the Belarusian Left Party "Fair World" by banning a rally against the abolition of social benefits that had been scheduled for December 2007.[72]

90. A notable trend is the prosecution of people who use modern information technology to organize events or report on them. There have been reports of arrests, detentions and fines in cases that include: group sledding in Slonim; a photo of BATE Borisov football club fans in support of Maidan (Kyiv); and people being held responsible for putting up Internet posts in support of the demonstrations in Ukraine.[73]

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[68] http://www.pravo.by/main.aspx?guid=3871&p0=H10800418.

[69] See footnote 52 above, p. 19.

[70] Vadzim Bylina, "Public protests in Belarus: the opposition is changing tactics", *Belarus Digest – News and Analysis of Belarusian Politics, Economy, Human Rights and Myths* (12 March 2014) (http://belarusdigest.com/print/17123).

[71] Radio Free Europe/Radio Liberty, "Belarusian activist sentenced for taking part in pro-Ukraine demo", 26 March 2014 (http://www.rferl.org/content/belarus-activist-arrested-pro-ukraine/25309982.html).

[72] Belarusian Legal Portal, "On Human Rights Day Homel Center for Strategic Litigation summed year's results", 10 December 2013 (http://prava-by.info/en/archives/3686).

[73] http://news.tut.by/society/385064.html; http://www.belaruspartisan.org/life/256222.

91. On 4 August, the anniversary of the arrest of Ales Bialiatski, NGOs planned to hold an event on freedom for political prisoners. Seventeen NGO representatives applied to hold pickets, and were all rejected. Various detentions ensued for participation in pickets, including the detentions of Uladzimir Labkovich and Tatiana Ravyaka. A Minsk court fined them each 3 million Belarusian roubles (approximately US$ 350) for violating regulations on organizing public events.[74]

92. In December 2013, two gay pride events scheduled in Minsk had to be cancelled as permission was not granted.[75] At the last minute, the owners of the premises where the events were to be held refused to lease them.

93. In 2013, more than 100 pickets were prohibited (i.e. the permits were denied),[76] yet the number of individual protests grew.[77]

94. The Special Rapporteur notes that since 1997, Belarus has been called upon by the United Nations human rights mechanisms to guarantee that civic organizations, human rights defenders, political parties and unions are able carry out their legitimate activities without fear of reprisals, restrictions, judicial harassment and intimidation, including peaceful exercise of their right to freedom of assembly.[78] This should be achieved by reviewing the national legislation of Belarus, particularly on the issuance of permissions for holding assemblies (A/HRC/15/16, para 98.34) and the decriminalization of public activities without official permission (A/68/276, para. 118(n)).

L. Freedom of association

95. Despite the 2013 amendments to the law on public associations, restrictions remain to freedom of association. NGO registration remains complicated, time-consuming and costly. Unregistered public associations, foundations and their members face criminal liability under article 193.1 of the Criminal Code. The receipt of in-country and foreign funding remains restricted.[79]

96. In the past year, the NGO Brest Christian Democracy was refused registration[80] and the NGO Tell the Truth was denied registration for the third time.[81] The complaint of the non-registered NGO GayBelarus[82] was returned without consideration by the Supreme Court. Following this, GayBelarus activists faced threats and harassment with reference made to their criminal responsibility under article 193.1 of the Criminal Code. After five unsuccessful attempts to reregister, the Human Rights Center "Viasna" remains

[74] See footnote 39 above, p. 421.

[75] http://euroradio.fm/ru/lgbt-aktivistam-ne-dali-provesti-ni-odnoy-vecherinki-v-minske.

[76] Freedom House, "Freedom on the Net 2013: key developments: May 2012–April 2013" (http://www.freedomhouse.org/report/freedom-net/2013/belarus).

[77] See footnote 70 above.

[78] A/HRC/15/16, paras. 98.9 and 98.31; A/HRC/20/8, para. 75; A/HRC/23/52, para. 119; A/68/276, para. 118(p) and (r).

[79] Frontline Defenders, "Belarus: risk of prison for unregistered human rights groups under article 193.1 of the Criminal Code", 23 June 2009 (http://www.frontlinedefenders.org/node/2073). See footnote 21 above, pp. 47, 56 and 92.

[80] Human Rights Center "Viasna", "Authorities refuse to register association 'Brest Christian Democrats'", 21 August 2013 (http://spring96.org/en/news/65341). See also footnote 21 above, p. 155.

[81] Naviny.by Belarus News, "Justice Ministry denies registration to 'Tell the Truth' movement", 16 June 2013 (http://naviny.by/rubrics/english/2013/06/17/ic_news_259_419143). See also footnote 21 above, p. 107.

[82] http://www.gaybelarus.by/.

unregistered.[83] The Special Rapporteur is worried that one of the largest NGOs in the country – internationally recognized and respected – has consistently been denied registration.

97. The Special Rapporteur reiterates the need to review, without delay, the systematically restrictive regulations relating to registration and activities of NGOs and trade unions, in order to facilitate their establishment and free operation[84] through a non-onerous process (A/HRC/23/52, para. 119(m)), and to decriminalize membership in unregistered NGOs.[85]

98. Since 1997, freedom of association has become more limited, underpinned by complex legislation. Journalists and human rights organizations and defenders appear to be under particular scrutiny, intimidation or harassment, raising concerns for their protection, safety and ability to work in a safe and secure environment.[86]

99. Political parties face constricting registration regulations (A/68/276, para. 56) and are prohibited from receiving gratuitous foreign aid for a specific list of activities.[87]

100. The Special Rapporteur considers that Belarus cannot expect to improve its human rights situation, including its economic, social and cultural record, without allowing NGOs to operate independently without hindrance or threats. Opening up dialogue with the participation of a broad variety of civil society organizations in public affairs can significantly contribute to shaping the future of the country. This would help build people's trust and confidence in the Government and institutions.

M. Trade unions

101. For many years, Belarus has been advised to bring its legislative framework on trade unions and strikes in line with the obligation to ensure freedom of activity of trade unions and the right to strike, to organize and to collective bargaining.[88]

102. While the Federation of Trade Unions states that 98 per cent of workers are trade union members, only 40 per cent of workers surveyed state that they belong to a union. In practice, workers have to be formally registered with the Federation of Trade Unions before they are hired. As with associations, registration for trade unions is impeded by bureaucratic administrative regulations. Presidential Decree No. 2, adopted on 24 January 2013, on some measures to regulate the activities of political parties, trade unions and other NGOs, places severe restrictions on the formation and registration of trade unions. All trade unions, if registered prior to this, have had to reregister. Registration is a long and complicated procedure. Without it, trade union activities are banned and the trade union faces dissolution.

103. At the 102nd session of the International Labour Organization (ILO) Committee on the Application of Conventions and Recommendations in June 2013, Belarus was again urged to take the necessary measure to amend Presidential Decree No. 2 to remove the obstacles to trade union registration, and had already proposed revoking the 10 per cent membership requirement for the establishment of a union at the enterprise level. Moreover,

[83] CCPR/C/90/D/1296/2004.
[84] CCPR/C/79/Add.86, para. 19; A/68/276, para. 118(p); A/HRC/15/16, paras 98.10 and 98.35.
[85] CEDAW/C/BLR/CO/7, para. 24; A/HRC/15/16, paras. 98.28 and 98.30.
[86] CCPR/C/79/Add.86, para. 19; A/HRC/20/8, paras. 59 and 75; A/HRC/15/16, paras. 98.27, 98.31 and 98.33; A/HRC/23/52, para. 94.
[87] A/68/276, para. 57; E/CN.4/2006/36, paras. 44–45.
[88] E/C.12/1/Add.7/Rev.1, para. 22; E/C.12/BLR/CO/4-6, para. 17; GB.318/INS/5/2, para. 26.

the Committee found that no concrete proposals to amend the legal address requirement, which hinders registration, had been taken.[89]

104. On 30 August 2013, the International Trade Union Confederation reported to ILO numerous allegations of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).[90] These include the denial of the right to hold pickets and demonstrations, the deregistration of a primary trade union affiliated to the Radio and Electronic Workers' Union and pressure and threats from the authorities against leaders of the Free Metal Workers' Union.

105. The Special Rapporteur notes the request of the ILO Committee to the Government to intensify its efforts in ensuring the freedom of association and respect for civil liberties are fully and effectively guaranteed in law and in practice, as well as its cooperation with all social partners.[91]

106. There is a need to review the overtly restrictive regulations relating to registration and activities of trade unions, in order to facilitate their establishment and free operation.[92]

N. Just and favourable conditions of work

107. Permanent, open-ended labour contracts have recently been replaced by short-term contracts in various sectors. A large proportion of workers (up to 90 per cent – exceptions being in the public service and some industrial sectors) are in a precarious situation, threatened with their contract not being renewed. Short-term contracts are the rule, not the exception, and are in violation of the International Covenant on Economic, Social and Cultural Rights. Such contracts subject workers to pressure, threats and discrimination (A/HRC/23/52, paras. 103–107).

108. The system imposed by both employment regulations and practices is that basic wages are complemented by bonuses. They represent an important proportion of monthly income but are not considered part of salary, and can therefore be arbitrarily suspended or suppressed at any time.

109. The situation created by Presidential Decree No. 9 of 7 December 2012 on additional measures to develop the woodworking industry continued to make it virtually impossible for workers to resign or have their contracts extended should they disagree with their working conditions (*ibid.*, paras. 106–107). The Decree violates the principle to freely choose and accept work.[93]

110. Complaints registered during consultations by the Special Rapporteur persist that provisions in the field of labour are applied in a discriminatory way against persons

[89] Observation (CEACR) adopted 2013, published 103rd ILC session (2014), Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 102nd Session, June 2013), Follow-up to the recommendations of the Commission of Inquiry (Complaint made under article 26 of the Constitution of the ILO) (http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3148992:NO)

[90] Ratified by Belarus in 1956.

[91] See footnote 89 above.

[92] CCPR/C/79/Add.86, para. 19; A/68/276, para. 118(p); A/HRC/15/16, paras. 98.10 and 98.35.

[93] Article 6 of the International Covenant on Economic, Social and Cultural Rights.

perceived as not following the line of the authorities. Article 14 of the Labour Code remains the only law that lists possible grounds for discrimination.[94]

111. The Special Rapporteur considers that Belarus should enshrine in its legal system the principle of non-discrimination in employment on all grounds, including indirect discrimination, in accordance with international standards.

O. Forced labour

112. The Special Rapporteur received reports of individuals being forced to work in circumstances unrelated to their occupations or situations. Such labour practices can be observed in a variety of ways in Belarus. Conscripts are obliged to carry out unpaid work unrelated to their military service activities. National, regional and local authorities regularly impose unpaid work on the working population through "subbotniks" (*ibid.*, para. 105). In theory, participation is on a voluntary basis; in practice, non-participation results in negative repercussions, such as the non-renewal of a short-term contract and arbitrary elimination of monthly bonuses. In detention facilities, inmates cannot choose the work they perform, nor can they refuse to undertake work. Graduates who received their education for free must work under assignment for one year after vocational education, or with a two-year assignment after a specialized secondary or higher education. All places are determined by a graduate assignment committee.

113. The Special Rapporteur recalls that the ILO regards the prohibition of forced labour as the cornerstone of international labour law (*ibid.*).

P. Discrimination

114. Despite that general principles of equality and non-discrimination are guaranteed in article 22 of the Constitution, no national legislation has been passed defining discrimination in a comprehensive, holistic way. There are no legal provisions on indirect discrimination.

115. Courts do not accept discrimination as a basis for lawsuits (A/HRC/23/52, para. 96). As a result, there is no court practice for hearing cases of discrimination.

116. Public servants are not trained in the prevention and identification of discriminatory practice. This is of particular concern due to the reports received by NGOs regarding discriminatory practice towards women and against minorities, in particular religious minorities, Roma and lesbian, gay, bisexual and transgender people.

Q. Persons with disabilities

117. The Interagency Council on Disability Issues under the Council of Ministers meets annually. There is limited information on attempts made by legislators to address meaningfully the concerns of persons with disabilities.

118. The 2013 Labour Code amendments do not give further guarantees for persons with disabilities against discrimination.

[94] Including based on sex, race, national origin, language, religious or political views, membership of trade union membership or non-membership of trade union or other public association.

119. Architectural accessibility is of concern, and the exact number of facilities architecturally accessible for the disabled remains unavailable.

120. Access to justice is dependent on a court assessment and a decision about the health of the individual; based on this, a person is invited to trial. In 2013, two cases on a barrier-free environment were considered in court, with both being won by the complainants. Despite this, the architectural barriers have not been removed due to the officers' inaction and inefficiency of the judicial system.

R. Gender

121. Belarus has been called upon to mainstream gender perspectives and ensure an approach to all policies ensuring gender equality, including combating stereotypical social roles and providing training to teachers, parliamentarians, judiciary, law enforcement personnel and women themselves.[95] NGOs report that efforts are underway in this field but that more needs to be done.

122. In order to redress the lack of an institutional framework to promote the integration of women into civil society and economic and political life,[96] successive recommendations by international human rights mechanisms have referred to the need to improve women's situation in the labour market, increase representation in senior positions and Government, and address the persistent pay gap by combating segregation in employment and obstacles to equal career prospects.[97] Similarly, there have been calls to undertake a legislative review, introducing anti-discrimination legislation and creating adequate judicial remedies.[98]

123. The Special Rapporteur highlights the need to introduce criminal legislation on domestic violence and marital rape, providing victims with immediate protection, long-term rehabilitation and broader awareness-raising, and relevant training for judges, lawyers, law enforcement agencies, social workers and the public at large.[99]

S. Minorities

1. Ethnicity

124. Belarus has been urged to work towards coordination of media to promote stable relations among ethnic groups (A/HRC/15/16, para. 97.51). Appropriate measures suggested, and not implemented to date, involve establishing an independent human rights institution,[100] human rights training (CERD/C/65/CO/2, para. 14), introducing judicial remedies and informing the public of their availability,[101] accepting discrimination as basis for lawsuits,[102] ensuring equal access to education (A/HRC/15/16, para. 98.14),[103] defining

[95] A/59/38, paras. 337–342; CEDAW/C/BLR/CO/7, paras. 14 and 18; A/55/38, para. 362.
[96] A/HRC/15/16, para 97.5; A/55/38, para. 356; A/59/38, para. 343; CEDAW/C/BLR/CO/7, para. 24.
[97] E/C.12/BLR/CO/4-6, paras. 11(b) and 12; E/CN.4/2006/36, para. 66; A/55/38, paras. 355, 359 and 365–366; A/59/38, paras. 351–352 and 357–358; CEDAW/C/BLR/CO/7, para. 32; A/HRC/15/16, paras 97.42–97.43; E/C.12/1/Add.7/Rev.1, para. 23; A/HRC/4/16, para. 43.
[98] A/HRC/23/52, paras. 95–99; A/55/38, para. 360; A/59/38, paras. 333–336; CEDAW/C/BLR/CO/7, para. 12.
[99] CAT/C/BLR/CO/4, para. 22; A/55/38, paras. 369–370; A/59/38, paras. 347–348; CEDAW/C/BLR/CO/7, para. 20.
[100] CERD/C/65/CO/2, para. 13; CERD/C/BLR/CO/18-19, para. 15.
[101] CERD/C/65/CO/2, para. 12; E/C.12/BLR/CO/4-6, para. 8(a)–(b); CERD/C/BLR/CO/18-19, para. 13.
[102] CERD/C/BLR/CO/18-19, para. 9; A/HRC/23/52, para. 96.

discrimination by statute[104] and extending the scope of labour law to indirect discrimination (CERD/C/BLR/CO/18-19, para. 11).[105]

2. Roma

125. The extent of discrimination faced by the Roma has frequently been pointed out, as well as the need to ensure their full participation in various mechanisms, including integration into the labour market and the education system. Specific measures are required to retain Roma students at school through awareness-raising, financial support and scholarships.[106]

3. Language

126. Concerns have been raised as to the limited use of the Belarusian language in education and cultural life because of a seemingly concerted effort to restrict promotion of the language and national identity through cultural activities and unofficial commemorations. It has been recommended that Belarus acts to ensure the unrestricted exercise of the right to promote, preserve and participate in cultural life.[107]

T. Elections

127. As reported by the Special Rapporteur to the General Assembly, the rights to vote and to be elected at genuine periodic elections are not guaranteed in Belarus (A/HRC/15/16, para. 18.14).[108]

128. In November 2013, the electoral code amendments were adopted in an atmosphere of secrecy. The new features, such as a one-round system replacing the previous two rounds, restrictive permission procedures for election-time public activities and the criminalization of calls for boycott, further restrict the democratic space and diminish the chances of the political opposition, thus strengthening the atmosphere of control and pressure against alternative political thoughts. The visit of the Office of Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe to Minsk in October 2013 found that practically none of the recommendations they provided after the 2012 parliamentary elections had been implemented.[109]

129. On 23 March 2014, local elections took place in Belarus. The national election observation, including the campaign "Human Rights Defenders for Free Elections" and the joint election NGO monitoring initiative "Right to Choose" both found that the elections were neither free nor fair.[110]

130. .In the local elections, the right to elect was in practice denied by the fact that 88 per cent of constituencies were uncontested, and in two districts elections did not take place.

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[104] CERD/C/BLR/CO/18-19, para. 8; A/HRC/23/52, para. 95.

[105] E/C.12/BLR/CO/4-6, para. 27; A/HRC/15/16, para. 98.14; CERD/C/65/CO/2, para. 10; CERD/C/BLR/CO/18-19, para. 16; A/HRC/4/16, para. 50.

[106] E/C.12/BLR/CO/4-6, paras. 29–30; E/CN.4/2005/35, paras. 63–64; E/CN.4/2006/36, paras. 89–90.

[107] Organization for Security and Co-operation in Europe, "OSCE/ODIHR presents recommendations from final report on 2012 parliamentary elections in Belarus", 7 March 2013 (http://www.osce.org/odihr/elections/100017).

[108] Human Rights Center "Viasna", "Monitoring report on local elections of the 27th convocation", 24 March 2014 (http://spring96.org/en/news/70122).

The election campaign was almost invisible. Lack of information for voters was also caused by the limiting financing requirements for candidates, as introduced through the 2013 Electoral Code amendments.

131. The Special Rapporteur expresses concern that the 2013 electoral reform was not inclusive of stakeholders, resulting in legislation that does not meet international norms and standards.

VI. Conclusions and recommendations

132. **The Special Rapporteur concludes that there has been very little progress in the area of human rights since he last reported to the Human Rights Council in June 2013. In fact, in areas where last year he had identified possible positive developments, the situation appears to have come to a standstill.**

133. **The Special Rapporteur observes an ongoing situation where the Government makes little effort to promote and protect human rights for those who live in Belarus. The review of the recommendations and observations of the United Nations human rights mechanisms only underlines the both systematic and systemic nature of the human rights violations that are consistently reported in Belarus.**

134. **The concerns and recommendations made by the United Nations human rights mechanisms have for, the most part, neither been implemented nor followed up on. They include shortcomings of rule of law institutions, lack of accountability for human rights violations and thus ensuing impunity.**

135. **The shortcomings that lead to persistent human rights violations must be addressed promptly through swift and effective institutional responses in order to contribute to strengthening the national human rights protection system.**

136. **With this in mind, the Special Rapporteur urges the Government to undertake measures to implement comprehensively all the recommendations made by the United Nations human rights mechanisms – treaty bodies, the Universal Periodic Review, special procedures and those from the High Commissioner for Human Rights.**

137. **The Special Rapporteur is grateful to all those who provided detailed first-hand information for his assessment. He regrets the fact that the Government did not avail itself of this opportunity. He again reiterates his readiness to fully cooperate with the Government, starting with issues that both sides acknowledge as human rights concerns.**[111]

138. **The Special Rapporteur stands ready to continue to offer his support to civil society, in accordance with his mandate, and acknowledges their spirit and commitment to the protection of human rights for all.**

139. **The Special Rapporteur recommends the following:**

(a) Release immediately and unconditionally all political opponents, human rights defenders and activists who have been convicted solely for the exercise of their political and other rights, and ensure their full rehabilitation;

(b) Repeal article 193.1 of the Criminal Code that criminalizes public activities without official permission, and fully review legislation affecting the work of

[111] Letter of 24 March 2014 to Vladimir Makey, Minister of Foreign Affairs, from the Special Rapporteur, requesting a visit to the country to discuss findings and recommendations of the report.

non-governmental organizations and human rights defenders to bring it into line with Human Rights Council resolution 22/6 of 21 March 2013;

(c) Take measures leading to meaningful political accountability, including the strengthening of checks and balances in the political system, the removal of impediments to the active engagement of non-governmental organizations and opposition parties in political life and the even-handed application of the rule of law; put in place an independent review process of the excessive use of presidential decrees in governance, with the aim to reform law-making procedures;

(d) Activate the work of the parliamentary working group on the death penalty, release comprehensive information on those executed to date and establish an immediate moratorium on the use of the death penalty with a view to its permanent abolition;

(e) Re-engage and expedite efforts to establish a national human rights institution in accordance with the Paris Principles;

(f) Remove legal and institutional obstacles, to guarantee the independence of the judiciary in accordance with the Basic Principles on the Independence of the Judiciary;

(g) Reform the bar association in order to guarantee its independence from the Ministry of Justice, and investigate cases of lawyers whose licences have been revoked;

(h) Investigate the fate of disappeared persons;

(i) Ensure that all detainees are informed promptly of the reasons for their detention and any charges against them, and allow them regular access to a lawyer of their choice and to their families;

(j) Ensure the absolute prohibition of torture and other ill-treatment in law and in practice, and take measures to bring conditions of detention in places of deprivation of liberty into line with the Standard Minimum Rules for the Treatment of Prisoners and other relevant international and national law standards;

(k) Adopt promptly a comprehensive anti-discrimination legislation;

(l) Review and adopt clear and explicit legislation that is in favour of holding peaceful assemblies; ensure in practice their facilitation and protection; and recognize spontaneous assemblies in law and in practice, including by amending the law on mass events to comply with the Constitution and international standards, including by outlawing one-person pickets;

(m) Amend legislation and practice to ensure that associations may be established through a process that is transparent, accessible, non-discriminatory, expeditious and inexpensive in line with Human Rights Council resolution 22/6;

(n) Protect human rights defenders and journalists from harassment, intimidation and violence as a result of their activities, and conduct prompt, impartial and thorough investigations, prosecution and punishment of any such acts;

(o) Remove all legal and practical obstacles to international cooperation of civil society striving to strengthen the enjoyment of the liberties provided for in international treaties and documents, including the obstacles that block, hinder, put conditions to, and in particular the ones that criminalize or financially penalize, funding help from peer organizations abroad;

(p) Increase efforts to ensure the full implementation of the recommendations laid out in the reports of the International Labour Organization;

(q) Recognize free mass use of Internet-based media, including in publicly accessible spaces, and repeal regulations that grant the Government powers to sanction content in the press;

(r) Broaden the scope of cooperation with the United Nations, including the Office of High Commissioner for Human Rights, to undertake activities reflecting all the recommendations stemming from the human rights system;

(s) Recognize and extend full cooperation to the mandate holder by engaging in a substantive and constructive dialogue and facilitating a visit to the country.